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2021 Supplement

Updated through the 2021 First Extraordinary and 2021 Regular Sessions of the General Assembly

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THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the Tennessee Code Commission

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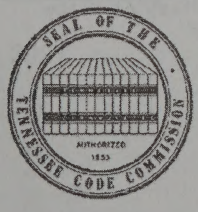
CERTIFICATE OF TENNESSEE CODE COMMISSION

I, Paige A. Seals, Executive Secretary of the Tennessee Code Commission, acting by authority of the Commission and pursuant to Section 1-1-110 of Tennessee Code Annotated, hereby certify that the Tennessee Code Commission has approved the manuscript of the Tennessee Code as contained in this pocket supplement and the companion pocket supplements; that the text of each section of the statutes of Tennessee printed or appearing in this and the companion pocket supplements has been compared with the original statute as published in the printed Public Acts; and the text of the Code sections codifying the Public Acts of 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 2005, 2006, 2007 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021 is a true and correct copy of the codification of the Public Acts of 1957, 1959, 1961, 1963, 1967, 1968 and 1969, Chapter 354 of the Public Acts of 1970, Chapter 1 of the Public Acts of 1971, Chapter 441 of the Public Acts of 1972, Chapter 1 of the Public Acts of 1973, Chapter 414 of the Public Acts of 1974, Chapter 1 of the Public Acts of 1975, Chapter 382 of the Public Acts of 1976, Chapter 1 of the Public Acts of 1977, Chapter 496 of the Public Acts of 1978, Chapter 1 of the Public Acts of 1979, Chapter 444 of the Public Acts of 1980, Chapter 1 of the Public Acts of 1981, Chapter 543 of the Public Acts of 1982, Chapter 1 of the Public Acts of 1983, Chapter 483 of the Public Acts of 1984, Chapter 2 of the Public Acts of 1985, Chapter 523 of the Public Acts of 1986, Chapter 786 of the Public Acts of 1986, Chapter 4 of the Public Acts of 1987, Chapter 458 of the Public Acts of 1988, Chapter 5 of the Public Acts of 1989, Chapter 668 of the Public Acts of 1990, Chapter 28 of the Public Acts of 1991, Chapter 528 of the Public Acts of 1992, Chapter 1 of the Public Acts of 1993, Chapter 543 of the Public Acts of 1994, Chapter 1 of the Public Acts of 1995, Chapter 554 of the Public Acts of 1996, Chapter 1 of the Public Acts of 1997, Chapter 574 of the Public Acts of 1998, Chapter 235 of the Public Acts of 1999, Chapter 574 of the Public Acts of 2000, Chapter 52 of the Public Acts of 2001, Chapter 491 of the Public Acts of 2002, Chapter 1 of the Public Acts of 2003, Chapter 437 of the Public Acts of 2004, Chapter 1 of the Public Acts of 2005, Chapter 507 of the Public Acts of 2006, Chapter 1 of the Public Acts of 2007, Chapter 607 of the Public Acts of 2008, Chapter 2 of the Public Acts of 2009, Chapter 624 of the Public Acts of 2010, Chapter 41 of the Public Acts of 2011, Chapter 582 of the Public Acts of 2012, Chapter 1 of the Public Acts of 2013, Chapter 530 of the Public Acts of 2014, Chapter 27 of the Public Acts of 2015, Chapter 569 of the Public Acts of 2016, Chapter 30 of the Public Acts of 2017, Chapter 536 of the Public Acts of 2018, Chapter 1 of the Public Acts of 2019, Chapter 518 of the Public Acts of 2020, and Chapter 33 of the Public Acts of 2021, and that the Code sections codifying other Public Acts of 2021, are not a part of the official Code until and unless their codification is enacted by subsequent legislation; however, they are correctly and accurately copied, with the exception of changes permitted by Section 1-1-108 of the Tennessee Code Annotated, and with the exception of changes made necessary due to repeal by implication and amendments by implication.

IN WITNESS WHEREOF, we have hereunto set our hand and seal of the Tennessee Code Commission, this 15th day of July, 2021.



Paige A. Seals
Executive Secretary
Tennessee Code Commission

STATE OF TENNESSEE
DEPARTMENT OF STATE

I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that Chapter 1 of the Public Acts of the 80th General Assembly, of the 81st General Assembly, of the 82nd General Assembly, of the 83rd General Assembly, of the 84th General Assembly, and of the 85th General Assembly; that Chapters 1 and 354 of the 86th General Assembly; that Chapters 1 and 441 of the 87th General Assembly; that Chapters 1 and 414 of the 88th General Assembly; that Chapters 1 and 382 of the 89th General Assembly; that Chapters 1 and 496 of the 90th General Assembly; that Chapters 1 and 444 of the 91st General Assembly; that Chapters 1 and 543 of the 92nd General Assembly; that Chapters 1 and 483 of the 93rd General Assembly; that Chapters 2, 523 and 786 of the 94th General Assembly; that Chapters 4 and 458 of the 95th General Assembly; that Chapters 5 and 668 of the 96th General Assembly; that Chapters 28 and 528 of the 97th General Assembly; that Chapters 1 and 543 of the 98th General Assembly; that Chapters 1 and 554 of the 99th General Assembly; that Chapters 1 and 574 of the 100th General Assembly; that Chapters 235 and 574 of the 101st General Assembly; that Chapters 52 and 491 of the 102nd General Assembly; that Chapters 1 and 437 of the 103rd General Assembly; that Chapters 1 and 507 of the 104th General Assembly; that Chapters 1 and 607 of the 105th General Assembly; that Chapters 2 and 624 of the 106th General Assembly; that Chapters 41 and 582 of the 107th General Assembly; Chapters 1 and 530 of the 108th General Assembly; that Chapters 27 and 569 of the 109th General Assembly; that Chapters 30 and 536 of the 110th General Assembly; that Chapters 1 and 518 of the 111th General Assembly; and that Chapter 33 of the 112th General Assembly of the State of Tennessee, all of which are incorporated in this and the companion volumes, are true and correct copies of the originals on file in my office and have been transmitted to the Tennessee Code Commission for publication.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the Great Seal of the State of Tennessee at Nashville, on the 15th day of July, 2021.

Tre Hargett
Secretary of State

Preface

This supplement contains the official version of material supplementing the Tennessee Code Annotated, Official Edition, as previously enacted, and new and amendatory laws of a general and permanent nature enacted in the 2021 First Extraordinary Session and the 2021 Regular Session of the 112th General Assembly. It was prepared by the editorial staff of the publisher with the assistance of Paige A. Seals, Revisor of Statutes and Executive Secretary for the Tennessee Code Commission.

Information about the Code and suggestions for its use may be found in the User's Guide, a version of which appears in each volume.

Please note: (1) Tennessee Code Annotated section designations assigned to 2021 acts by the General Assembly may have been changed by the Tennessee Code Commission pursuant to § 1-1-108; and (2) under Tenn. Const., art. II, § 24, laws requiring the expenditure of state funds may be null and void unless first-year funding is approved in the year in which the law is passed.

This supplement contains annotations from Supreme Court decisions posted to Lexis Advance through April 15, 2021. Annotations are taken from decisions or articles that appear in the following traditional sources:

South Western Reporter, 3d Series
Supreme Court Reporter
Federal Reporter, 3d Series
Federal Supplement, 2d Series
Bankruptcy Reporter
Opinions of the Attorney General
Tennessee Bar Journal
Tennessee Law Review
University of Memphis Law Review
Vanderbilt Law Review

Suggestions, comments, or questions about the Tennessee Code Annotated are always welcome. You may call us toll free at (800) 833-9844, email us at customer.support@lexisnexis.com, or write Tennessee Editor, LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342.

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TENNESSEE CODE ANNOTATED

TITLE 67

TAXES AND LICENSES

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PART 2

EXEMPTIONS

67-5-207. Religious, charitable, scientific, educational institutions.

(a)(1) Property of Tennessee nonprofit corporations that is used for permanent housing of low income persons with disabilities, or low income elderly persons, is exempt in accordance with this section. The property must be financed by a grant under § 211 or § 811 of the National Affordable Housing Act (42 U.S.C. §§ 12741 and 8013, respectively), or the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11301 et seq.), or be financed or refinanced by a loan made, insured, or guaranteed by a branch, department or agency of the United States government under § 515(b) or § 521 of the Housing Act of 1949 (42 U.S.C. §§ 1485(b) and 1490a, respectively), § 202 of the Housing Act of 1959 (12 U.S.C. § 1701q, § 221, § 223, § 231) or § 236 of the National Housing Act (12 U.S.C. §§ 1715l, 1715n, 1715v and 1715z-1, respectively), or § 8 of the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974 (42 U.S.C. § 1437f). For the purposes of this section, a loan is considered to be guaranteed if the federal housing agency has consented to assignment of a housing assistance program contract as security for the loan. In the case of a property financed or refinanced by a loan, eligibility for the exemption under these programs continues so long as there is an unpaid balance on the loan. Following payment of the loan in full, a property shall continue to be exempt from taxation so long as the project is restricted to use for elderly persons or persons with disabilities as defined in the programs. In the case of a property financed by a grant, eligibility for the exemption under these programs continues so long as the project is restricted to use for elderly persons or persons with disabilities as defined in the programs. The property must be used as below-cost housing for elderly persons or persons with disabilities within the program definitions, who have incomes not in excess of limits established for the enumerated program by the department of housing and urban development (HUD). If a property was approved by HUD for participation in the program without specific low income guidelines, the property may nevertheless qualify for exemption on a pro rata basis, if at least fifty percent (50%) of the low income residents have incomes that would qualify under HUD guidelines for any of the enumerated programs. In such cases the property shall be exempt in the same percentage that low income residents represent of the total occupancy of the property at full capacity, determined as of January 1 each year, on the basis of information supplied

to the assessor on or before April 20.

(2) The owners of projects exceeding twelve (12) units shall agree to make payments in lieu of taxes to the tax jurisdictions in which they are located, in an amount negotiated to cover the cost of improvements, facilities or services rendered by the tax jurisdiction, but if no amount is agreed the payments shall be not less than twenty-five percent (25%) of the amount of tax that would be due if the project were not exempt. In no event shall such payments be required of public housing authorities operating under the Housing Authorities Law, compiled in title 13, chapter 20.

(b) To qualify for such exemption, any such not-for-profit corporation must first be exempt from federal income taxation by virtue of qualifying as an exempt charitable organization or as an exempt social welfare organization under the Internal Revenue Code (26 U.S.C.), and any amendments thereto. In addition, the not-for-profit corporation shall have charter provisions providing in substance that:

(1) The directors and officers shall serve without compensation;

(2) The corporation is irrevocably dedicated to and operated exclusively for not-for-profit purposes;

(3) No part of the income or assets of the corporation shall be distributed to nor inure to the benefit of any individual;

(4) In the event of dissolution of the corporation or other liquidation of its assets, the corporation's property shall not be conveyed to any individual for less than the fair-market value of such property; and

(5) All assets remaining after payment of the corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for not-for-profit purposes similar to those of the corporation.

(c) All claims for exemption under this section are subject to § 67-5-212(b).

(d) Subject to the general requirements of this section for exemption of federally assisted housing, there shall also be exempted under this section those properties owned by not-for-profit organizations and funded under the HOME Investment Partnerships Program (42 U.S.C. § 12701 et seq.), or a housing trust fund established in accordance with title 7, chapter 8 or title 13, chapter 23, part 5. To qualify, the property must be used for permanent housing for low income or very low income persons who are elderly or have a disability.

(e) Nothing in this section shall be construed to preclude the application of § 67-5-212 to transitional or temporary housing that qualifies as a charitable use of property under that section.

History.

Acts 1973, ch. 226, § 5; 1975, ch. 168, § 1; 1975, ch. 323, § 1; 1983, ch. 122, §§ 1-3; T.C.A., § 67-509; Acts 1988, ch. 1002, §§ 1, 2; 1990, ch. 1009, §§ 1, 2; 1991, ch. 399, § 1; 1992, ch. 652, §§ 1, 2; 1993, ch. 454, §§ 1-3; 1994, ch. 617, § 1; 1994, ch. 645, § 1; 1997, ch. 347, § 1; 2002, ch. 704, §§ 1-4; 2008, ch. 1104, § 1; 2009, ch. 111, §§ 1, 2; 2011, ch. 47, §§ 74, 75; 2014, ch. 887, §§ 1, 2; 2019, ch. 355, § 1.

Amendments.

The 2019 amendment substituted "a housing trust fund established in accordance with title 7, chapter 8 or title 13, chapter 23, part 5" for "the state-funded Housing Opportunities Using State Encouragement (HOUSE) Program" in (d).

Effective Dates.

Acts 2019, ch. 355, § 6. May 10, 2019.

67-5-212. Religious, charitable, scientific, educational institutions — Assessment Act.

(a)(1) There shall be exempt from property taxation the real and personal property, or any part of the real and personal property, owned by any religious, charitable, scientific, or nonprofit educational institution that is occupied and actually used by the institution or its officers purely and exclusively for carrying out one (1) or more of the exempt purposes for which the institution was created or exists. There shall further be exempt from property taxation the real and personal property, or any part of the real and personal property, owned by an exempt institution, but occupied and actually used by:

(A) Another religious, charitable, scientific, or nonprofit educational institution or its officers purely and exclusively for carrying out one (1) or more of the exempt purposes for which the occupying institution was created or exists;

(B) An exempt institution that originated as part of a single exempt institution and that continues to use the property for the same religious, charitable, scientific, or nonprofit educational purposes, whether by charter, contract, or other agreement or arrangement; or

(C) The United States government, the state of Tennessee, or any agency or political subdivision thereof.

(2) In determining the exemption applicable to a post-secondary educational institution, there shall be a presumption that the entire original campus of an institution chartered before 1930 is an historical and integral entity, and is exempt so long as no particular portion of such campus is used for nonexempt purposes.

(3)(A) The property of such institution shall not be exempt, if:

(i) The owner, or any stockholder, officer, member, or employee of such institution shall receive or may be lawfully entitled to receive any pecuniary profit from the operations of that property in competition with like property owned by others that is not exempt, except reasonable compensation for services in effecting one (1) or more of such purposes, or as proper beneficiaries of its strictly religious, charitable, scientific, or educational purposes; or

(ii) The organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such institution, or for any of its members or employees, or if it be not in good faith organized or conducted exclusively for one (1) or more of these purposes.

(B) The real property of any such institution not so used exclusively for carrying out thereupon one (1) or more of such purposes, but leased or otherwise used for other purposes, whether the income received therefrom be used for one (1) or more of such purposes or not, shall not be exempt; but, if a portion only of any lot or building of any such institution is used purely and exclusively for carrying out thereupon one (1) or more of such purposes of such institution, then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining or

other portion shall be subject to taxation.

(4) No church shall be granted an exemption on more than one (1) parsonage, and an exempt parsonage may not include within the exemption more than three (3) acres.

(5) For property owned by a corporation organized for the exclusive purpose of holding title to property for use by any organization that itself qualifies for exemption under this section, only such property of the corporation, or such parts thereof, as would be entitled to an exemption under this section if owned directly by such organization shall be exempt from property taxation.

(b)(1) Any owner of real or personal property claiming exemption under this section or § 67-5-207, § 67-5-213, § 67-5-219, or as otherwise required by law, shall file an application for the exemption with the state board of equalization on a form prescribed by the board and supply such further information as the board may require to determine whether the property qualifies for exemption. No property that is subject to these application requirements shall be exempted from property taxes unless the application has been approved in writing by the board. An application shall be deemed filed on the date it is received by the board or, if mailed, on the postmark date. The applicant shall provide a copy of the application with any supporting materials to the assessor of property of the county in which the property is located. An application for exemption pursuant to this section or any other section referring to these procedures shall be treated as an appeal for purposes of § 67-5-1512.

(2) The board shall make an initial determination granting or denying exemption through its staff designee, who shall send written notice of the initial determination to the applicant and the assessor of property. Written notice includes notification by electronic means and notice may be preserved in digital or electronic format. Either the assessor of property or the applicant may appeal the initial determination to the board and shall be entitled to a hearing prior to any final determination of exemption. The assessor shall retain copies of any approved exemptions in paper, electronic, or digital format. Upon approval of exemption, it is not necessary that the applicant reapply each year, but the exemption shall not be transferable or assignable and the applicant shall promptly report to the assessor any change in the use or ownership of the property that might affect its exempt status. The board may by rule impose a filing fee for processing applications for exemption. Such filing fee shall not exceed one hundred twenty dollars ($120) and shall be proportionate to the value of the property at issue. For purposes of this section, "filing" means one (1) submission that may include multiple parcels, including real and personal property, with a clear nexus to one (1) exemption determination.

(3)(A) Any institution claiming an exemption under this section that has not previously filed an application for and been granted an exemption for a parcel must file an application for exemption with the state board of equalization by May 20 of the year for which exemption is sought. If the application is approved, the exemption will be effective as of January 1 of the year of application or as of the date the exempt use of such parcel

began, whichever is later. If application is made after May 20 of the year for which exemption is sought, but prior to the end of the year, the application may be approved but will be effective for only a portion of the year determined as follows:

(i) If application is filed within thirty (30) days after the exempt use of the property began, exemption will be effective as of the date the exempt use began; or

(ii) If application is filed more than thirty (30) days after the exempt use began, the exemption will be effective as of the date of application.

(B) If a religious institution acquires property that was duly exempt at the time of transfer from a transferor who had previously been approved for a religious use exemption of the property, or if a religious institution acquires property to replace its own exempt property, then the effective date of exemption shall be three (3) years prior to the date of application, or the date the acquiring institution began to use the property for religious purposes, whichever is later. The purpose of this subdivision (b)(3) is to provide continuity of exempt status for property transferred from one exempt religious institution to another in the specified circumstances. For purposes of this subdivision (b)(3), property transferred by a lender following foreclosure shall be deemed to have been transferred by the foreclosed debtor, whether or not the property was assessed in the name of the lender during the lender's possession.

(C) In any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census, if a nonprofit educational institution which is a medical college acquires one (1) or more parcels of land or portions thereof for the purpose of carrying out one (1) or more of the exempt purposes for which the institution was created or exists, the institution may claim and file an application for exemption under this section or § 67-5-213, and the effective date of such exemption shall be up to three (3) years prior to the date of application, or the date the institution began to use the property for exempt purposes, whichever is later. This subdivision (b)(3)(C) shall apply to properties acquired before May 25, 2017, so that such properties are not subject to taxation under this chapter while owned by the exempt educational institution and used for one (1) or more of the exempt purposes for which the institution was created or exists; provided, however, that nothing in this subdivision (b)(3)(C) requires a county to refund any taxes that were collected prior to May 25, 2017.

(D) In any county with a population of not less than four hundred thirty-two thousand two hundred (432,200) nor more than four-hundred thirty-two thousand three hundred (432,300), according to the 2010 federal census or any subsequent federal census, or within a municipality located within such county, if a nonprofit children's hospital changes the use of one (1) or more parcels of land or portions thereof for the purpose of carrying out one (1) or more of the exempt purposes for which the institution was created or exists, the institution may claim and file an application for exemption under this section or § 67-5-213, and the

effective date of such exemption shall be up to three (3) years prior to the date of application, or the date the institution began to use the property for exempt purposes, whichever is later. In determining the date that a qualifying institution begins using property for an exempt purpose, subsection (g) applies to the full extent of both improvements and underlying real property so that the entire property, to the extent that the full value of underlying land and any improvements thereon, is considered to be occupied and used by the qualifying institution or its officers purely and exclusively for the institution's purposes from and after the commencement of construction of improvements. This subdivision (b)(3)(D) applies to properties acquired before May 15, 2018, so that such properties are not subject to taxation under this chapter while owned by the qualifying institution and used for one (1) or more of the exempt purposes for which the institution was created or exists, and any property taxes paid on such property that were collected prior to May 15, 2018, shall be refunded.

(4) All questions of exemption under this section shall be subject to review and final determination by the board; provided, that any determination by the board is subject to judicial review by petition of certiorari to the appropriate chancery court. All other provisions of law notwithstanding, no property shall be entitled to judicial review of its status under this statute, except as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and only after the exhaustion of administrative remedies as provided in this section.

(5) The state board of equalization may revoke any exemption approved under this section, either in whole or in part, if it determines that the exemption was approved on the basis of fraud, misrepresentation, or erroneous information, that the current owner of the property does not qualify for exemption, or that the property is not actually being used for an exempt purpose. Property is not actually being used for an exempt purpose if the property is not currently in use, has been abandoned, is not suitable for human habitation, or is being used for a nonexempt purpose. The executive secretary of the board may initiate proceedings for revocation on the executive secretary's own motion or upon the written complaint of any person upon a determination of probable cause. Revocation shall not be retroactive, unless the order of revocation incorporates a finding of fraud or misrepresentation on the part of the applicant or failure of the applicant to give notice of a change in the use or ownership of the property as required by this section.

(c) As used in this section, "charitable institution" includes any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community.

(d)(1) The property, or any part thereof, owned by any religious, charitable, scientific or educational membership nonprofit organization chartered by the United States congress shall not be denied exemption because administrative, social or recreational activities of such organization are conducted thereon, where the activities are:

(A) Agencies for the advancement and enlargement of the purposes for which the organizations exist;

(B) In furtherance of the general purposes of such organization; or

(C) To promote the interest of its membership in such organizations.

(2) When property is owned by corporations organized for the exclusive purpose of holding title to property for use of any organization that itself qualifies for such exemption from taxation under this subsection (d), only such property of the corporation, or such parts thereof, as would be entitled to an exemption under this subsection (d) if owned directly by such organization shall not be denied exemptions.

(3) The exemption of property or parts thereof under this subsection (d) shall be applicable only to such part of the property on which such organization conducts administrative, social or recreational activities, if it is less than the entire property.

(e)(1) There shall be exempt from property taxation the property of labor organizations exempted from the payment of federal income taxes by the United States Internal Revenue Code (26 U.S.C. § 501(c)(5)), when such property is not used for revenue producing profit, but is used by such organization for charitable or educational meetings; but, if part of the property is used for revenue producing profit, then the part so used shall not be exempt from property taxation; provided, that the real property on which the building is situated shall be exempt from property taxation.

(2) No such organization that discriminates against any person based upon race, sex, religious beliefs or national origin shall be eligible for the property tax exemption authorized by subdivision (e)(1).

(f) [Deleted by 2019 amendment.]

(g) In the case of property that is owned by any religious, charitable, scientific, or educational institution and on which such institution constructs improvements to be occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists, the property may be exempt as follows:

(1) If construction of the improvements is completed within twelve (12) months of its commencement, the property, to the extent of the value of the land and the value of the improvements constructed thereon, shall be considered to be occupied and used by the institution or its officers purely and exclusively for the institution's purposes from and after, but not before, the commencement of construction of the improvements. Land shall be considered occupied and used by the institution to the extent it is reasonably necessary to support structures or site improvements associated with structures;

(2) If construction of the improvements is completed more than twelve (12) months after commencement, the property, to the extent of the value of the improvements constructed thereon for these purposes, shall be considered to be occupied and used by the institution or its officers purely and exclusively for the institution's purposes from and after, but not before, the commencement of construction of the improvements and to the extent of such value shall be exempt from taxation;

(3) If the improvements upon completion are not so occupied and used, then no part of the value of the property shall be exempt from taxation during the construction of the improvements;

(4) If upon completion of the improvements a portion thereof is not so used and occupied, such portion shall not be exempt from taxation during construction of the improvements; and

(5) If the improvements upon completion are not occupied and used by such institution or its officers for a period of ten (10) years, purely and exclusively for carrying out thereupon one (1) or more of the purposes for which such institution was created or exists, the institution shall be liable for the full amount of property taxes that would otherwise have been due and payable during the period of construction, plus penalties and interest as provided in this title.

(h) There shall be exempt from property taxation the property or any part thereof of fraternal organizations exempted from the payment of federal income taxes by the United States Internal Revenue Code (26 U.S.C. § 501(c)), to the extent that such property is used not for revenue-producing profit, but directly, physically and exclusively for religious, charitable, scientific and educational activities.

(i) There shall be exempt from property taxation the property, or any part thereof, of nonprofit county fair associations.

(j) There shall be exempt from property taxation the property or any portion thereof containing one (1) residential dwelling located in a community park that is open to entry by the general public, if such dwelling is owned by a nonprofit religious, charitable, educational or scientific organization that does not receive income from the resident thereof, if such resident does not occupy the dwelling in lieu of a salary, and if such resident, by such resident's presence, would discourage or prohibit damage or destruction by vandalism of the organization's property.

(k) There shall be exempt from property taxation any property upon which a caretaker's dwelling is located, if:

(1) The dwelling is located upon land owned by a nonprofit member organization chartered by the United States congress;

(2) The land immediately surrounding the dwelling is used by such organization for nonprofit religious, charitable, educational or scientific purposes; and

(3) The caretaker's presence is required for the physical security of the users of the property as well as to discourage or prohibit damage or destruction of the organization's property by vandalism.

(*l*) The general assembly finds that public radio broadcasting serves a valid educational purpose so long as the broadcaster holds an educational broadcast license issued by the federal communications commission; and, therefore, that property, or any part thereof, owned by a public radio station that is an affiliate member of the public broadcasting network, and that is organized as a nonprofit charitable or educational institution, shall be exempt from property taxation to the extent the property is used in a manner consistent with the license.

(m) The general assembly finds that public television broadcasting serves a valid educational purpose so long as the broadcaster holds a noncommercial

educational broadcast license issued by the federal communications commission. Therefore, that property, or any part thereof, owned by a public television station that is an affiliate member of the public broadcasting network, and that is organized as a nonprofit charitable or educational institution, shall be exempt from property taxation to the extent the property is used in a manner consistent with the license.

(n) There shall be exempt from property taxation the real and personal property, or any part thereof, that is owned by a religious or charitable institution and that is occupied and used by such institution for a thrift shop; provided, that:

(1) The institution is exempt from payment of federal income taxes under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));

(2)(A) The thrift shop is operated as a training venue for persons in need of occupational rehabilitation; or

(B) The thrift shop is operated primarily by volunteers;

(3) The inventory of the thrift shop is obtained by donation to the institution that owns and operates the shop;

(4) Goods are priced at levels generally ascribed to used property;

(5) Goods are given to persons whose financial situations preclude payment; and

(6) The net proceeds of the thrift shop are used solely for the charitable purposes of the institution that owns and operates the shop.

(o) Land not necessary to support exempt structures or site improvements associated with exempt structures, including land used for recreation, retreats or sanctuaries, shall not be eligible for exemption beyond a maximum of one hundred (100) acres per county for each religious, charitable, scientific or nonprofit educational institution qualified for exemption pursuant to this section. For purposes of applying this limit, land owned by an exempt institution shall be aggregated with land owned by related exempt institutions having common ownership or control. Qualifying land in excess of the limit shall be classified as forest land upon application submitted pursuant to § 67-5-1006, or as open space land upon application submitted pursuant to § 67-5-1007, and the effective date of the classification shall be the date the property might otherwise have qualified for exemption.

History.

Acts 1973, ch. 226, § 5; 1974, ch. 771, §§ 5-7; 1974, ch. 774, §§ 1, 2; 1975, ch. 322, § 1; 1976, ch. 670, §§ 1, 2; 1976, ch. 849, § 1; 1977, ch. 255, §§ 1, 2; 1977, ch. 421, §§ 1-5; 1979, ch. 22, § 1; 1981, ch. 96, § 1; 1981, ch. 218, § 1; 1981, ch. 306, §§ 1, 2; 1982, ch. 713, § 1; 1983, ch. 460, § 1; T.C.A., § 67-513; Acts 1984, ch. 507, § 1; 1984, ch. 651, § 1; 1984, ch. 749, § 1; 1984, ch. 766, § 1; 1984, ch. 809, § 1; 1984, ch. 832, § 4; 1985, ch. 68, § 1; 1994, ch. 541, §§ 2-8; 1997, ch. 467, § 1; 2000, ch. 628, § 1; 2000, ch. 793, § 1; 2000, ch. 938, § 2; 2000, ch. 993, § 2; 2002, ch. 687, §§ 1, 2; 2003, ch. 251, § 1; 2004, ch. 531, § 2; 2004, ch. 635, § 1; 2004, ch. 732, §§ 1, 2; 2005, ch. 500, § 12(a); 2006, ch. 740, § 1; 2006, ch. 861, § 1; 2007, ch. 292, § 2; 2008, ch. 1104, §§ 2-4; 2010, ch. 1036, § 2; 2010, ch. 1074, § 1; 2011, ch. 415, § 1; 2013, ch. 209, § 5; 2017, ch. 155, § 1; 2017, ch. 409, § 1; 2017, ch. 465, § 1; 2018, ch. 527, § 1; 2018, ch. 957, § 1; 2019, ch. 355, §§ 2-5.

Amendments.

The 2019 amendment, in (a)(1), inserted "real and personal" preceding "property" twice, substituted ", but" for "that is" preceding "occupied and", and deleted "another exempt institution for one (1) or more of the exempt purposes for which it was created or exists under an arrangement" at the end; rewrote (a)(1)(A), which read: "In which the owning institution receives no more rent than a reasonably allocated share of the cost of use, excluding the cost of capital improvements, debt service, depreciation, and interest, as determined by the state

board of equalization; or"; in (a)(1)(B), substituted "An exempt institution" for "Which is solely between exempt institutions", and substituted "continues" for "continue"; and added (a)(1)(C) and (a)(5); in (b)(2), substituted "exemptions" for "applications", inserted "filing" preceding "fee" twice, and rewrote the last sentence, which read: "For purposes of this section, 'filing' means one (1) submission that may include multiple parcels, including real and personal property, with a clear nexus to one (1) exemption determination."; in (b)(3)(A)(i), deleted "or May 20, whichever is later" following "use began"; in (b)(3)(D), substituted "subsection (g)" for "§ 67-5-212(g)"; in (b)(5), inserted "either in whole or in part," preceding "if it determines", substituted "that the current owner" for "or that the current owner or use", and inserted ", or that the property is not actually being used for an exempt purpose. Property is not actually being used for an exempt purpose if the property is not currently in use, has been abandoned, is not suitable for human habitation, or is being used for a nonexempt purpose" following "qualify for exemption"; deleted (f), which read: "There shall be exempt from property taxation the property or any part thereof of nonprofit artificial breeding associations chartered under the Tennessee Nonprofit Corporation Act, compiled in title 48, chapters 51-69."; in (g), deleted the designation for (g)(1) from the first paragraph and added "may be exempt as follows:" at the end; added (g)(1); added the designations for (g)(2) and (3); in (g)(2), added "If construction of the improvements is completed more than twelve (12) months after commencement, the property" at the beginning, deleted "the" preceding "construction of", and deleted "provided, that, if" at the end; in (g)(3), inserted "If" at the beginning, and substituted the semicolon at the end for a period; deleted former (g)(4), which read: "Construction begun, and having the effect of activating this subsection (g), shall be completed within five (5) years or the effect of this subsection (g) shall be null and void."; redesignated former (g)(2) and (3) as (g)(4) and (5), respectively; and in (g)(4), substituted "of the improvements; and" for a period at the end.

Effective Dates.

Acts 2019, ch. 355, § 6. May 10, 2019.

67-5-216. Growing crops.

Attorney General Opinions.

The proposed legislation would exempt from taxation wooden barrels while the barrels are used to produce whiskey. But those barrels are not within the scope of the exemption allowed for "manufactured articles" under article II, section 30 of the Tennessee Constitution. The legislative finding to the contrary notwithstanding, barrels used by a whiskey maker to age whiskey are not "manufactured articles" as that term has long been construed by the Tennessee Supreme Court. A statute exempting such barrels from taxation would not comport with article II, section 30, of the Tennessee Constitution. OAG 18-06, 2018 Tenn. AG LEXIS 49 (3/5/2018).

Proposed Senate Bill 2076/House Bill 2038, 110th Tenn. Gen. Assem. (2018), as amended by Amendment No. 2 to HB 2038 (HA 0942/Drafting Code 014670), is not constitutional. Under article II, section 30, of the Tennessee Constitution, as interpreted and construed by the Tennessee Supreme Court, an article being used to manufacture another product — such as a barrel being used by a whiskey maker to manufacture aged whiskey — is not entitled to an exemption from constitutionally mandated ad valorem taxation, and it is not within the legislative power to override or modify a judicial interpretation of the Constitution. OAG 18-15, 2018 Tenn. AG LEXIS 12 (3/26/2018).

PART 3

ASSESSORS AND EQUALIZERS GENERALLY

67-5-302. Filing and preservation of oaths.

The clerk of each county shall keep and preserve the oaths prescribed for assessors and deputies in paper, electronic, or digital format.

History.

Acts 1907, ch. 602, § 36; Shan., § 972a6; Code 1932, § 1688; modified; T.C.A. (orig. ed.), § 67-1715; Acts 2019, ch. 63, § 1.

Amendments.

The 2019 amendment deleted ", in a well bound book, which the county shall furnish at its expense," following "county shall", and sub-

stituted "in paper, electronic, or digital format" for ", and shall forward the book to the state board of equalization" at the end.

Effective Dates.
Acts 2019, ch. 63, § 6. March 28, 2019.

67-5-304. Reports to local and state boards of equalization.

(a) The assessor shall make a report of the assessor's assessments and shall make available to the local board of equalization all of the assessor's records pertaining to the area involved on or before the first day the board shall meet.

(b) Each assessor, when making the report of assessments to the local board of equalization as provided in subsection (a), shall accompany the report with the following oath, which shall be taken and subscribed to before the county mayor, or in the county mayor's absence, before a notary public, viz:

I, _____, assessor of the county (city) of _____, state of Tennessee, do solemnly swear (or affirm) that I have assessed all taxable property, in the county (city) of _____, as far as ascertainable, to the true owners thereof, and that I have determined the classification and assessed valuation of all taxable property as prescribed by law; and that I have faithfully discharged all my duties without fear, favor, or affection to the best of my knowledge and ability, so help me God.

(c)(1) It is the duty of each assessor to compile a report listing the total of all assessments prepared by the assessor's office in such manner and on such forms as may be required by the state board of equalization.

(2) [Deleted by 2019 amendment.]

History.
Acts 1973, ch. 226, § 6; T.C.A., §§ 67-629, 67-630, 67-632; Acts 2003, ch. 90, § 2; 2019, ch. 63, § 3.

Amendments.
The 2019 amendment deleted former (c)(2), which read: "Such report shall be filed with the state board of equalization at such time as the board shall require."

Effective Dates.
Acts 2019, ch. 63, § 6. March 28, 2019.

67-5-307. Informal review of assessments.

Assessors may provide taxpayers with an informal review of assessments made pursuant to § 67-5-504 or made during a county reappraisal pursuant to § 67-5-1601 if the following requirements are met:

(1) The informal review concludes at least ten (10) days prior to county board of equalization adjournment; and

(2) The assessor informs the taxpayer in writing of the taxpayer's right to appeal to the county board of equalization if dissatisfied with the outcome of the informal review.

History.
Acts 2019, ch. 63, § 2.

Effective Dates.
Acts 2019, ch. 63, § 6. March 28, 2019.

PART 5

CLASSIFICATION AND ASSESSMENT — MISCELLANEOUS PROVISIONS

67-5-501. Definitions.

NOTES TO DECISIONS

13. Pipelines.

Whether locally assessed commercial and industrial pipe is correctly classified as real property or personal property requires a case-by-case analysis and application of the law of fixtures to the relevant facts; T.C.A. § 67-5-501(10)(B)(iii) does not generally apply to locally assessed piping because that piping is on the owner's property. Colonial Pipeline Co. v. TN State Bd. of Equalization, — S.W.3d —, 2021 Tenn. App. LEXIS 25 (Tenn. Ct. App. Jan. 28, 2021).

Board of Equalization properly interpreted T.C.A. § 67-5-501(10) to mean that pipes or pipelines placed by the property owners themselves, for example, at a manufacturing plant, are not permitted or authorized; piping installed on land owned in fee simple by the piping owner does not require legal approval and thus does not fall within the plain meaning of the statutory language. Here, § 67-5-501(10)(B)(iii) applied to the pipelines owned by the company but did not apply to locally assessed piping used in the manufacturing or refining process. Colonial Pipeline Co. v. TN State Bd. of Equalization, — S.W.3d —, 2021 Tenn. App. LEXIS 25 (Tenn. Ct. App. Jan. 28, 2021).

67-5-502. Place and function of assessment.

(a) The function of assessment shall be to assess:

(1) All property, except such property as shall be assessed by the comptroller of the treasury, to the person or persons owning or claiming to own the same on January 1 for the year for which the assessment is made, if known and, if not, to unknown owners; provided, that any temporary improvement, or movable structures that are assessable under § 67-5-802, regardless of ownership, shall be assessed as real property as an improvement to the land where located;

(2) The property held by executors and administrators in the county, district or ward in which the decedent resided at the time of the death until such have been distributed; but, if the deceased lived in another state, then the property shall be assessed where the personal representative resides; and

(3) Personal property held by trustees and guardians of minors and severely and persistently mentally ill persons to each guardian or trustee in the county, ward or district where such minor, or severely and persistently mentally ill person resides, if a resident of the state; and, if a nonresident, then in the county, ward or civil district in which the guardian or trustee resides; provided, that guardian held property shall be assessed in the county where the guardian having control thereof renders such guardian's annual settlement.

(b) The property of all street railroad, gas, electric light companies, modern market telecommunications providers, and all public utility companies, including their franchises, used within any town, city, or taxing district where the office of the company is located outside of such incorporated city or town or taxing district, but with the main property within the city, shall be taxed in the city, town, or taxing district as if the office was situated within the city limits,

and the property, including franchises of the corporations and joint stock companies that lie wholly or mainly within any incorporated city, taxing district, or town, or whose chief business is within any incorporated city, taxing district, or town, shall be assessed for taxation in such city, taxing district, or town; provided, that all real property and tangible personal property shall be taxed in the district where situated; and provided further, that public utility property of every kind, whether real property, tangible personal property, or intangible personal property, shall all be assessed for taxes at fifty-five percent (55%) of its value and that all property of modern market telecommunications providers shall be assessed at the rate applicable to commercial and industrial property of the same type.

(c) Leased personal property used by a public utility company or modern market telecommunications provider shall be assessed to such company or provider, unless such property is the subject of a lawful agreement between the lessee and a local government for payments in lieu of taxes. Other leased personal property shall be classified according to the lessee's use and assessed to the lessee, unless such property is the subject of a lawful agreement between the lessee and a local government, or instrumentality thereof, for payments in lieu of taxes. Personal property that is leased to and used by any religious, charitable, scientific, or nonprofit educational institution purely and exclusively for one (1) or more of the purposes for which the institution was previously determined to be exempt under § 67-5-212 shall not be deemed to be used in a business or profession, and shall not be classified as industrial or commercial property for property tax purposes.

(d) All mineral interests and all other interests of whatever character, not defined as products of the soil, in real property, including the interest that the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which interest or interests is or are owned separately from the general freehold, shall be assessed to the owner thereof, separately from the other interests in such real estate, which other interests shall be assessed to the owner thereof, all of which shall be assessed as real property, unless the lessee's or a sublessee's interest in any such real property, including any improvements erected upon the land, is the subject of a lawful agreement between a lessee and a local government, or instrumentality thereof, for payments in lieu of taxes, entered into or amended on or after April 30, 2019, in which case such property shall be assessed solely to such governmental entity and shall be subject to all applicable exemptions.

(e) Notwithstanding contrary provisions of law, the comptroller of the treasury may establish a pilot program for assessing leased tangible personal property to the owner/lessor rather than the lessee. Participation in the program shall be voluntary, at the election of owner/lessors who are selected by the comptroller of the treasury to participate based on criteria that optimize savings in the cost of assessment compliance and administration. The comptroller of the treasury may impose a fee to defray the cost of administration. Participants shall be permitted to report leased property centrally in lieu of the schedules otherwise required under § 67-5-903 or § 67-5-904, and the comptroller of the treasury shall be responsible for distributing centrally reported

assessments based on situs. Participants may be permitted to claim the business tax credit provided in § 67-4-713 for property taxes paid pursuant to a central assessment, and the credit may be taken at the participant's option either on the return due in the jurisdiction of situs or the jurisdiction from which the lease originated.

History.
Acts 1973,, ch. 226, § 6; T.C.A., § 67-602; Acts 1990, ch. 1075, § 6; 1992, ch. 660, § 1; 1995, ch. 305, § 122; 1998, ch. 894, § 2; 2004, ch. 571, § 1; 2004, ch. 667, § 1; 2017, ch. 490, § 3; 2019, ch. 265, §§ 1, 2.

Amendments.
The 2019 amendment inserted "or instrumentality thereof," in the second sentence of (c); and added the language beginning with ", unless the lessee's or a sublessee's interest" in the second sentence of (d).

Effective Dates.
Acts 2019, ch. 265, § 3. April 30, 2019.

67-5-514. Telecommunications tower properties.

If owned by a public utility company, telecommunications tower properties used in whole or in part for telecommunications shall be assessable by the comptroller of the treasury. As used in this section, telecommunications tower properties includes the tower, site improvements, land and structures supporting it.

History.
Acts 2000, ch. 649, § 1; 2019, ch. 102, § 1.

Amendments.
The 2019 amendment substituted "If owned" for "Whether or not owned" at the beginning of the first sentence.

Effective Dates.
Acts 2019, ch. 102, § 2. April 11, 2019.

67-5-516. Collection procedures for C-PACER program.

When a local government establishes a C-PACER program pursuant to § 68-205-105, the collection procedures must comply with this chapter and shall not otherwise infringe on a taxpayer's right to appeal.

History.
Acts 2021, ch. 138, § 2.

Effective Dates.
Acts 2021, ch. 138, § 4. July 1, 2021.

PART 8

CLASSIFICATION AND ASSESSMENT — REAL PROPERTY

67-5-801. Classification and rate of assessment.

(a) For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use and assessed as provided in this section:

(1) **Public Utility Property.** Public utility property shall be assessed at fifty-five percent (55%) of its value;

(2) **Industrial and Commercial Property.** Industrial and commercial property shall be assessed at forty percent (40%) of its value;

(3) **Residential Property.** Residential property shall be assessed at twenty-five percent (25%) of its value; and

(4) **Farm Property.** Farm property shall be assessed at twenty-five percent (25%) of its value.

(b)(1) Where a parcel of real property is used for more than one (1) purpose, which would result in different subclassifications and different assessment percentages, then it shall be apportioned among the subclasses according to guidelines established by rules and regulations of the state board of equalization.

(2) Notwithstanding subdivision (b)(1), when a parcel of real property is the principal residence of its owner, contains not more than one (1) rental unit, and is used as a short-term rental unit, as defined by § 13-7-602, the assessor of property should presume the classification of the property is residential.

(3) When a parcel is classified as residential under subdivision (b)(2), the same owner of the property may request residential classification for a maximum of one (1) additional parcel in this state and the assessor of property should presume residential classification when the one (1) additional parcel meets the following conditions:

(A) The parcel of real property contains not more than one (1) rental unit;

(B) The property is used as a short-term rental unit, as defined by § 13-7-602;

(C) The owner of the property lives on the property a minimum of fourteen (14) days each year or at least ten percent (10%) of the number of days the property is rented as a short-term rental unit, whichever is greater; and

(D) The owner of the property annually files a written affidavit with the assessor of property by September 1 of the prior year verifying that the property meets all requirements and the owner has no more than one (1) additional parcel in addition to their principal residence under this section.

(c)(1) All real property that is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

(A) Immediate prior use, if any;

(B) Location;

(C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;

(D) Other legal restrictions on use;

(E) Availability of water, electricity, gas, sewers, street lighting, and public services;

(F) Size;

(G) Access to public thoroughfares; and

(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2)(A) If, after consideration of all such factors, any such real property does not fall within any of the definitions and classifications in this section,

such property shall be classified and assessed as farm or residential property.

(B) When a mobile home attached to real property as described in § 67-5-802 is used as a residence, the assessor of property may presume the classification is residential.

History.
Acts 1973, ch. 226, § 6; T.C.A., § 67-611; Acts 2017, ch. 297, § 1; 2020, ch. 787, § 11.

Amendments.
The 2020 amendment, effective January 1, 2021, added (b)(2) and (b)(3).

Effective Dates.
Acts 2020, ch. 787, § 12. January 1, 2021.

67-5-806. Use of property maps — Revision of property maps.

(a) Where any county or municipality other than metropolitan governments has prepared or has had prepared property maps, that identify parcels of land within the area of that local government, that assign a number or other identifying symbol to such parcels and that show names of streets and public ways, and where such maps have been made a matter of public record and have been filed in the office of the county registrar, the parcel number or other identifying symbol that a specific parcel has been assigned on the official property identification map or maps shall be a sufficient description and identification of such property for purposes of assessment. Property maps prepared for property tax and assessment purposes shall not be conclusive evidence of property ownership in any court of law.

(b)(1) The state division of property assessment shall supervise the preparation, maintenance, revision and recording of all such property maps. It shall be the duty of the assessor to annually file a copy or reproduction of such property maps, as currently revised, with the county register of deeds, except in counties with a metropolitan form of government, who shall, without charge, accept, file, and preserve such copy or reproduction as a public record. Such copy or reproduction shall be filed on or before April 15 of each year, and shall reflect the status of property as of January 1. The copy or reproduction must use a format and storage medium approved by the director of the division of property assessments.

(2) The state division of property assessment shall revise such property maps to indicate the proper boundary between adjoining counties upon receipt of a notice from the state board of equalization as provided in former § 5-2-115(d)(3) [repealed].

History.
Acts 1973, ch. 226, § 6; 1980, ch. 709, §§ 1, 2; T.C.A., § 67-614; Acts 1986, ch. 703, § 3; 1987, ch. 46, §§ 1, 2; 1998, ch. 666, §§ 1, 2; 2000, ch. 622, § 2; 2013, ch. 209, § 10; 2019, ch. 59, § 1.

Amendments.
The 2019 amendment, effective January 1, 2020, substituted "April 15" for "October 1" in the second sentence of (b)(1).

Effective Dates.
Acts 2019, ch. 59, § 2. January 1, 2020.

67-5-807. Preparation and delivery of tax rolls or books.

Attorney General Opinions.

Under T.C.A. § 67-5-1601(c)(2), a city generally is required to pay one half of the local costs of reappraisal of properties within the city. The city and county may agree on a different amount, but the city may not unilaterally choose to pay a lesser amount. Furthermore, the county assessor may not agree to withhold the tax rolls from a city, even if the city has not paid one half of the reappraisal costs of properties within the city as required by T.C.A. § 67-5-1601(c)(2). OAG 17-50, 2017 Tenn. AG LEXIS 50 (11/15/2017).

PART 10

CLASSIFICATION AND ASSESSMENT — AGRICULTURAL, FOREST AND OPEN SPACE LAND ACT OF 1976

67-5-1004. Definitions.

As used in §§ 11-14-201, 11-15-107, 11-15-108, and this part, unless the context otherwise requires:

(1)(A) "Agricultural land" means land that meets the minimum size requirements specified in subdivision (1)(B) and that either:

(i) Constitutes a farm unit engaged in the production or growing of agricultural products; or

(ii) Has been farmed by the owner or the owner's parent or spouse for at least twenty-five (25) years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use.

(B) To be eligible as agricultural land, property must meet one (1) of the following minimum size requirements by consisting of:

(i) A single tract of at least fifteen (15) acres, including woodlands and wastelands;

(ii) Two (2) noncontiguous tracts within the same county, including woodlands and wastelands, one (1) of which is at least fifteen (15) acres and the other being at least ten (10) acres and together constituting a farm unit; or

(iii) Two (2) noncontiguous tracts within the same county totaling at least fifteen (15) acres, including woodlands and wastelands, that are separated only by a road, body of water, or public or private easement and together constituting a farm unit;

(2) "Commissioner" means the commissioner of agriculture or the commissioner's designee;

(3) "Forest land" means land constituting a forest unit engaged in the growing of trees under a sound program of sustained yield management that is at least fifteen (15) acres and that has tree growth in such quantity and quality and so managed as to constitute a forest;

(4) "Gross agricultural income" means total income, exclusive of adjustments or deductions, derived from the production or growing of crops, plants, animals, aquaculture products, nursery, or floral products, including income from the rental of property for such purposes and income from federal set aside and related agricultural management programs;

(5) "Local government advisory committee," "Tennessee local government advisory committee," or "Tennessee local government planning advisory committee" means the local government planning advisory committee created by § 4-3-727;

(6) "Open space easement" means a perpetual right in land of less than fee simple that:

(A) Obligates the grantor and the grantor's heirs and assigns to certain restrictions constituted to maintain and enhance the existing open or natural character of the land;

(B) Is restricted to the area defined in the easement deed; and

(C) Grants no right of physical access to the public, except as provided for in the easement;

(7) "Open space land" means any area of land other than agricultural and forest land, of not less than three (3) acres, characterized principally by open or natural condition, and whose preservation would tend to provide the public with one (1) or more of the benefits enumerated in § 67-5-1002, and that is not currently in agricultural land or forest land use. "Open space land" includes greenbelt lands or lands primarily devoted to recreational use;

(8) "Owner" means the person holding title to the land;

(9) "Person" means any individual, partnership, corporation, organization, association, or other legal entity;

(10) "Planning commission" means a commission created under § 13-3-101 or § 13-4-101;

(11) "Present use value" means the value of land based on its current use as either agricultural, forest, or open space land and assuming that there is no possibility of the land being used for another purpose;

(12) "Rollback taxes" means the amount of back tax differential payable under § 67-5-1008; and

(13) "State forester" means the director of the division of forestry.

History.

Acts 1976, ch. 782, § 4; 1977, ch. 256, § 1; 1978, ch. 613, §§ 1, 2; T.C.A., § 67-653; Acts 1984, ch. 685, § 3; 1992, ch. 661, §§ 2-5; 1992, ch. 693, § 18; 1998, ch. 1066, § 8; 1999, ch. 141, § 1; 2002, ch. 632, § 1; 2017, ch. 297, § 2; 2019, ch. 436, § 1.

Amendments.

The 2019 amendment, effective January 1, 2020, in (1)(B), substituted "one (1) of the following minimum size requirements by consisting of:" for "minimum size requirements as follows: it must consist either of a"; added the designations for (1)(B)(i) and (ii); and added (1)(B)(iii).

Effective Dates.

Acts 2019, ch. 436, § 2. January 1, 2020.

67-5-1005. Classification of agricultural land.

(a)(1) Any owner of land may apply for its classification as agricultural by filing a written application with the assessor of property. The application must be filed by March 15. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as agricultural the year before under different ownership is disqualified if the new owner does not timely apply. The assessor shall send a notice of disqualification to these owners, but shall accept a late application if filed within thirty (30) days of the notice of disqualification and

accompanied by a late application fee of fifty dollars ($50.00).

(2) The assessor shall determine whether such land is agricultural land, and, if such a determination is made, the assessor shall classify and include it as such on the county tax roll.

(3) In determining whether any land is agricultural land, the assessor of property shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land, if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as "agricultural land" as defined in this part.

(b) An application for classification of land as agricultural land shall be made upon a form prescribed by the state board of equalization and shall set forth a description of the land, a general description of the use to which it is being put, and such other information as the assessor may require to aid the assessor in determining whether the land qualifies for classification as agricultural land.

(c) The assessor shall verify actual agricultural uses claimed for the property during the on-site review provided under § 67-5-1601. The assessor may at any time require other proof of use or ownership necessary to verify compliance with this part.

(d) Any person aggrieved by the denial of any application for the classification of land as agricultural land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors of property or boards of equalization.

History.

Acts 1976, ch. 782, § 5; T.C.A., § 67-654; Acts 1989, ch. 56, § 1; 1992, ch. 661, §§ 6, 7; 1994, ch. 838, § 1; 1996, ch. 707, § 1; 1999, ch. 141, §§ 2, 3; 2001, ch. 152, § 1; 2008, ch. 971, § 1; 2008, ch. 1161, § 2; 2021, ch. 383, § 1.

Amendments.

The 2021 amendment substituted "March 15" for "March 1" in the second sentence of (a)(1).

Effective Dates.

Acts 2021, ch. 383, § 5. May 11, 2021.

67-5-1006. Classification of forest land.

(a)(1) Any owner of land may apply for its classification as forest land by filing a written application with the assessor of property. The application must be filed by March 15. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as forest land the year before under different ownership is disqualified if the new owner does not timely apply. The assessor shall send a notice of disqualification to these owners, but shall accept a late application if filed within thirty (30) days of the notice of disqualification and accompanied by a late application fee of fifty dollars ($50.00).

(2) The assessor shall determine whether such land is forest land, and, if such a determination is made, the assessor shall classify and include it as such on the county tax roll.

(b)(1) In determining whether any land is forest land, the assessor of property shall take into account, among other things, the acreage of such land, the amount and type of timber on the land, the actual and potential growth rate of the timber, and the management practices being applied to the land and to the timber on it.

(2) The assessor of property may request the advice of the state forester in determining whether any land should be classified as forest land, and the state forester shall make such advice available.

(c) An application for classification of land as forest land shall be made upon a form prescribed by the state board of equalization, in consultation with the state forester, and shall include a description of the land, a general description of the uses to which it is being put, aerial photographs, if available, and such other information as the assessor of property or state forester may require to aid the assessor of property in determining whether the land qualifies for designation as forest land.

(d) Any person aggrieved by the denial of an application for the classification of land as forest land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors of property or boards of equalization.

History.

Acts 1976, ch. 782, § 6; T.C.A., § 67-655; Acts 1989, ch. 56, § 2; 1999, ch. 141, § 4; 2000, ch. 599, § 1; 2001, ch. 152, § 2; 2008, ch. 971, § 1; 2008, ch. 1161, § 3. 2017, ch. 297, § 3; 2021, ch. 383, § 2.

Amendments.

The 2021 amendment substituted "March 15" for "March 1" in the second sentence of (a)(1).

Effective Dates.

Acts 2021, ch. 383, § 5. May 11, 2021.

67-5-1007. Classification of open space.

(a)(1) The planning commission, in preparing a land use or comprehensive plan for the municipality or county, may designate upon such plan areas that it recommends for preservation as areas of open space land, other than lands currently in agricultural and forestry uses.

(2) Land included in any area so designated upon such plan as finally adopted may be classified as open space land for purposes of property taxation, if there has been no change in the use of such area that has adversely affected its essential character as an area of open space land between the date of the adoption of such plan and the date of such classification.

(b)(1) Any owner of land may apply for its classification as open space land by filing a written application with the assessor of property. The application must be filed by March 15. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as open space land the year before under different ownership is disqualified if the new owner does not timely apply. The assessor shall

send a notice of disqualification to these owners, but shall accept a late application if filed within thirty (30) days of the notice of disqualification and accompanied by a late application fee of fifty dollars ($50.00).

(2) Such assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of such municipality or county and, if the assessor determines that there has been no such change, the assessor shall classify such land as open space land and include it as such upon the tax rolls of the county.

(3) An application for classification of land as open space land shall be made upon a form prescribed by the state board of equalization and shall set forth a description of the land, a general description of the use to which it is being put, and such other information as the assessor may require to aid the assessor in determining whether such land qualifies for such classification.

(c) Any person aggrieved by the denial by an assessor of any application for the classification of land as open space land shall have the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of assessors or boards of equalization.

History.

Acts 1976, ch. 782, § 7; T.C.A., § 67-656; Acts 1989, ch. 56, § 3; 1999, ch. 141, § 5; 2000, ch. 599, § 2; 2001, ch. 152, § 3; 2008, ch. 1161, § 4; 2021, ch. 383, § 3.

Amendments.

The 2021 amendment substituted "March 15" for "March 1" in the second sentence of (b)(1).

Effective Dates.

Acts 2021, ch. 383, § 5. May 11, 2021.

67-5-1008. Present use valuation — Capitalization of income method — Rollback taxes — Involuntary conversion of use.

(a) When a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under this part, it shall be subsequently considered that its current use for agricultural or timber purposes or as open space used for neither of these purposes is its immediate most suitable economic use, and assessment shall be based upon its value in that current use, rather than on value for some other use as may be determined in accordance with part 6 of this chapter. It is the responsibility of the applicant to promptly notify the assessor of any change in the use or ownership of the property that might affect its eligibility under this part.

(b)(1) After a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under this part, the assessor of property shall record it on a separate list for the classified property. The assessor may record with the register of deeds the application for the classification of the property. However, if the assessor does not record the application, then the property owner shall record with the register of deeds the application for the classification of the property. Any fees that may be required shall be paid by the property owner.

(2) Henceforth, the assessor shall appraise the land and compute the taxes each year based upon both:

(A) The twenty-five percent (25%) of appraised value applicable to property in the farm classification and present use value; and

(B) Farm classification and value as determined under part 6 of this chapter, but taxes shall be assessed and paid only on the basis of farm classification and present use value under this part.

(3) The taxes computed under part 6 of this chapter shall be used to compute the rollback taxes, as defined in § 67-5-1004 and as provided for in subsection (d).

(4) The general assembly finds that value as determined under subdivision (b)(2)(B) should not be deemed the value of property for any purpose other than a future assessment of rollback taxes, because it does not determine the actual tax liability of a qualifying owner at the time of valuation. Accordingly, value as determined under subdivision (b)(2)(B) shall not be deemed determinative of fair market value for any purpose other than the administration of property taxes under this title.

(c)(1) A parcel of land classified by the assessor as agricultural, forest or open space land under this part shall be valued by dividing three (3) into the sum of two (2) times the use value as defined in this subsection (c), plus the farm land value as defined in this subsection (c). The rate of increase in per acre present use values as determined under this subsection (c) shall not exceed a factor measured by the number of years since the last general reappraisal or updating of values in the county, times six percent (6%).

(2)(A) Use value shall be determined by dividing:

(i) The annual agricultural income estimate for such parcel as determined by the division of property tax assessment by;

(ii) The capitalization rate as determined in subdivision (c)(2)(C).

(B) For purposes of this part, "agricultural income estimate" means anticipated net return to land utilizing sound farming or forestry practices. In determining anticipated net return to land that is used for agricultural and forestry purposes, the division of property tax assessments shall consider farm income, or forestry income, soil productivity, topography, susceptibility to flooding, rental value and other factors that may serve to determine anticipated agricultural or forestry income. The annual agricultural income estimate for a parcel of open space land shall be the same as that for the least productive type of agricultural land.

(C) The capitalization rate shall be the maximum allowable rate on loans for terms in excess of five (5) years guaranteed by the federal Farm Service Agency or its successor, as of the assessment date for the year in which the use value schedule is being developed. The rate may be adjusted by no more than one hundred (100) basis points to reflect differences in land classes within a jurisdiction.

(3) Farm land value shall be determined by the division of property assessments based solely on farm-to-farm sales least influenced by commercial, industrial, residential, recreational or urban development, the potential for such development, or any other speculative factors.

(4) The state board of equalization, upon petition by at least ten (10) owners of agricultural, forest or open space land, or upon petition of any organization representing ten (10) or more owners of agricultural, forest or

open space land, shall convene a hearing to determine whether the capitalization rate has been properly determined by the division of property tax assessments, whether the agricultural income estimates determined by the division of property tax assessments are fair and reasonable, or if the farm land values have been determined in accordance with this section. Such hearing shall be held in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. The petition shall be filed at the office of the state board of equalization on or before twenty (20) days after the date the division of property assessments publishes notice of the availability of the proposed use value schedule in a newspaper of general circulation within the county.

(d)(1) The appropriate assessor shall compute the amount of taxes saved by the difference in present use value assessment and value assessment under part 6 of this chapter, for each of the preceding three (3) years for agricultural and forest land, and for the preceding five (5) years for open space land, and the assessor shall notify the trustee that such amount is payable, if:

(A) Such land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;

(B) The owner of such land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn;

(C) The land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or an unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified;

(D) An owner fails to file an application as required by this part;

(E) The land exceeds the acreage limitations of § 67-5-1003(3); or

(F) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.

(2) When the tax rate for the most recent year of rollback taxes is not yet available, the assessor shall calculate the amount of taxes saved for the most recent year by using the last made assessment and rate fixed according to law, and the trustee shall accept tender of the amount determined to be owing.

(3) The amount of tax savings calculated under this subsection (d) shall be the rollback taxes due as the result of disqualification or withdrawal of the land from classification under this part. Rollback taxes shall be payable from the date written notice is provided by the assessor, but shall not be delinquent until March 1 of the following year. When the assessor determines there is liability for rollback taxes, the assessor shall give written notice to the tax collecting official identifying the basis of the rollback taxes and the person the assessor finds to be responsible for payment, and the assessor shall provide a copy of the notice to the responsible person. Rollback taxes shall be a first lien on the disqualified property in the same manner as other property taxes, and shall also be a personal responsibility of the current owner or seller of the land as provided in this part. The assessor may void the rollback assessment, if it determined that the assessment was

imposed in error. Liability for rollback taxes, but not property values, may be appealed to the state board of equalization by March 1 of the year following the notice by the assessor. However, property values fixing the amount of rollback taxes may only be appealed as otherwise provided by law.

(4)(A) If, under subdivision (d)(1), only a portion of a parcel is subject to rollback taxes, the assessor of property shall apportion the assessment of such parcel on the first tax roll prepared after such taxes become payable, and enter the apportioned amount attributable to such portion as a separately assessed parcel on the tax roll.

(B) Such apportionment shall be made for each of the years to which the rollback taxes apply.

(e)(1) In the event that any land classified under this part as agricultural, forest, or open space land or any portion thereof is converted to a use other than those stipulated herein by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, such land or any portion thereof involuntarily converted to such other use shall not be subject to rollback taxes by the landowner, and the agency or body doing the taking shall be liable for the rollback taxes. Property transferred and converted to an exempt or nonqualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain.

(2) In the event the land involuntarily converted to such other use constitutes only a portion of a parcel so classified on the assessment rolls, the assessor shall apportion the assessment and enter the portion involuntarily converted as a separately assessed parcel on the appropriate portion of the assessment roll. For as long as the landowner continues to own the remaining portion of such parcel and for as long as the landowner's lineal descendants collectively own at least fifty percent (50%) of the remaining portion of such parcel, the remaining portion so owned shall not be disqualified from use value classification under this part solely because it is made too small to qualify as the result of the involuntary proceeding.

(3) In the event that any land classified under this part as agricultural, forest, or open space land or any portion thereof is acquired by a bank, as defined in § 45-2-107(a)(1)(A), by a savings and loan association, as defined in § 45-3-104(a)(1), or by a holder of a deed of trust or mortgage in satisfaction or partial satisfaction of a debt previously contracted in good faith, such land or any portion thereof so acquired shall not be subject to rollback taxes assessed against or payable by the bank or savings and loan association, and shall be subject to rollback taxes, only if the land is used for a non-green belt purpose or after such land is sold by the bank, savings and loan association or a holder of a deed of trust or mortgage and then only as provided in subsection (d). This subdivision (e)(3) shall likewise apply to the temporary transfer of property classified under this part to a trustee in bankruptcy.

(4)(A) If any property or any portion of the property classified under this part as agricultural, forest, or open space land is disqualified by a change in the law or as a result of an assessor's correction of a prior error of law or fact, then the property or any portion of the property that is disqualified

shall not be assessable for rollback taxes. The property owner shall be liable for rollback taxes under these circumstances if the erroneous classification resulted from any fraud, deception, or intentional misrepresentation, misstatement, or omission of full statement by the property owner or the property owner's designee.

(B) Nothing in this subdivision (e)(4) shall relieve a property owner of liability for rollback taxes if other disqualifying circumstances occur before the property has been assessed at market value for three (3) years.

(f) If the sale of agricultural, forest or open space land will result in such property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use or otherwise, the seller shall be liable for rollback taxes, unless otherwise provided by written contract. If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within ninety (90) days from the sale date, the rollback taxes shall become solely the responsibility of the buyer.

(g) For purposes of valuation pursuant to this section, the maximum acreage available for any one (1) owner classified as forest or open space land under this part shall be one thousand five hundred (1,500) acres. This subsection (g) shall operate to change the classification of any such land in excess of one thousand five hundred (1,500) acres that has been so classified under this part prior to July 1, 1984.

(h) Property passing to a lineal descendant of a deceased greenbelt owner, by reason of the death of the greenbelt owner, shall not be subject to rollback solely because the total greenbelt acreage of the new owner exceeds the maximum under § 67-5-1003, or will exceed the maximum following the transfer. Property exceeding the limit in these circumstances shall be disqualified from greenbelt classification, but shall not be assessable for rollback unless other disqualifying circumstances occur before the property has been assessed at market value three (3) years.

History.

Acts 1976, ch. 782, § 8; 1979, ch. 149, §§ 1, 2; 1982, ch. 818, § 1; 1983, ch. 267, § 1; T.C.A., § 67-657; Acts 1987, ch. 279, §§ 1, 2, 4; 1992, ch. 661, §§ 8-12; 1995, ch. 459, §§ 1, 2; 1997, ch. 160, § 1; 1998, ch. 683, § 1; 1999, ch. 141, § 6; 2001, ch. 152, §§ 4-7; 2002, ch. 632, §§ 2-5; 2006, ch. 861, § 2; 2008, ch. 971, § 1; 2008, ch. 1161, §§ 5, 6; 2010, ch. 928, § 1; 2014, ch. 589, § 1; 2016, ch. 685, § 1; 2019, ch. 322, § 1; 2021, ch. 383, § 4.

Amendments.

The 2019 amendment, in (b)(1), deleted the former first sentence, which read: "After a parcel of land has been classified by the assessor of property as agricultural, forest, or open space land under this part, the assessor of property shall record it on a separate list for such classified property, and the assessor shall record with the register of deeds the application for such classification of the property", and added the first three sentences.

The 2021 amendment deleted ", except there shall be no refund of rollback taxes that have been collected at the request of a buyer or seller at the time of the sale" from the end of the fifth sentence in (d)(3).

Effective Dates.

Acts 2019, ch. 322, § 2. May 8, 2019.

Acts 2021, ch. 383, § 5. May 11, 2021.

PART 13

CLASSIFICATION AND ASSESSMENT — UTILITIES AND CARRIERS

67-5-1331. Certification of valuation to local officials — Collection of tax.

(a) As soon as the comptroller of the treasury has received the valuation from the board of equalization, the comptroller of the treasury shall certify to the trustee and county assessor of property of each county in which any of such property lies, the amount to be taxed in such counties, respectively, for county purposes; and likewise to the city recorder and/or city official whose responsibility it is to collect the tax of any incorporated city or town the amount to be taxed by such city or town.

(b) [Deleted by 2019 amendment.]

History.
Acts 1973, ch. 226, § 11; T.C.A., § 67-935; Acts 1995, ch. 305, § 125; 2019, ch. 118, § 2.

Amendments.
The 2019 amendment deleted former (b) which read: "The amount of the state tax, if any, shall be collected by the comptroller of the treasury."

Effective Dates.
Acts 2019, ch. 118, § 5. April 9, 2019.

67-5-1332. Lien of taxes — Delinquency.

The taxes so assessed in behalf of counties, towns, and cities shall be a first lien upon the property from January 1 of the year for which the taxes are assessed, and they shall become due and delinquent as all other ad valorem taxes.

History.
Acts 1973, ch. 226, § 11; T.C.A., § 67-936; Acts 2019, ch. 118, § 3.

Amendments.
The 2019 amendment deleted "the state," preceding "counties, towns, and cities".

Effective Dates.
Acts 2019, ch. 118, § 5. April 9, 2019.

67-5-1333. [Repealed.]

History.
Acts 1973, ch. 226, § 11; T.C.A., § 67-937; Acts 1995, ch. 305, § 125; repealed by Acts 2019, ch. 118, § 4, effective April 9, 2019.

Compiler's Notes.
Former § 67-5-1333 concerned issuance of distress warrants and sale of property for delinquent taxes.

PART 14

ASSESSMENT REVIEW — COUNTY BOARDS OF EQUALIZATION

67-5-1401. Failure of taxpayer to protest assessment before board — Effect.

NOTES TO DECISIONS

2. Jurisdiction.

Trial court correctly determined that it lacked jurisdiction to hear the taxpayer's appeal of reclassification because the taxpayer failed to exhaust all administrative remedies by bringing the issue before the county board of equalization. E. Tenn. Pilot's Club, Inc. v. Knox Cty., — S.W.3d —, 2019 Tenn. App. LEXIS 33 (Tenn. Ct. App. Jan. 25, 2019).

67-5-1412. Appeal of county or other local board action to state board authorized.

(a)(1) Any taxpayer, or any owner of property subject to taxation in the state, who is aggrieved by any action taken by the county board of equalization or other local board of equalization has the right to a hearing and determination by the state board of equalization of any complaint made on any of the grounds provided in § 67-5-1407. At any conference or hearing pursuant to part 15 of this chapter, and in the event there may be duplicate appeals filed on any parcel or should the state board of equalization have reason to believe that representation is not duly authorized, the board may require from any agent, or other representative, written authorization signed by the taxpayer.

(2) No agent or other representative shall file an appeal before the county or state boards of equalization without first obtaining written authorization from the taxpayer.

(b)(1) The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in § 67-5-508.

(2) Notwithstanding subdivision (b)(1) or any other law to the contrary, a taxpayer or owner may, with the written consent of the assessor, appeal the valuation of industrial and commercial real and tangible personal property to the local board of equalization, or directly to the state board of equalization. A direct appeal to the state board of equalization must be filed before August 1 of the tax year. The taxpayer or owner shall request, in writing via certified mail, return receipt requested, such concurrence from the assessor within ten (10) days after the date the assessment notice for the property is sent, or by June 1 of the tax year, or such other date as may be prescribed by the assessor, but no later than the adjournment date for the regular annual session of the county board of equalization. The request shall state, at a minimum, the name in which the property is assessed, the parcel identification number, the value sought, the basis for the appeal and the name, address, telephone number and fax number of the person requesting the direct appeal. The assessor shall provide such concurrence at least ten (10) days before the adjournment of the county board. If the assessor does not concur with a direct appeal to the state board, and so states in writing at least ten (10) days before the adjournment of the county board of equalization, then the taxpayer or owner shall appeal first to the local board of equalization. If the assessor fails to act upon the taxpayer's or owner's request at least ten (10) days before the adjournment of the county board, then the state board of equalization shall accept the direct appeal of the taxpayer or owner. A taxpayer or owner filing a direct appeal shall attach a

copy of the assessor's concurrence to the appeal form filed with the state board, or, if the assessor failed to act timely on a request for a direct appeal, a taxpayer or owner filing a direct appeal shall attach a copy of the written request for the concurrence and a statement that the assessor of property failed to provide a timely response to the request. All direct appeals to the state board under this subdivision (b)(2) shall be filed before August 1 of the tax year.

(3) [Deleted by 2020 amendment.]

(c) Complaints and appeals to the state board of equalization must be filed in such format as the board may require by rule, and the board may permit the use of electronic filing including electronic verification and signatures. The appellant has the right to withdraw any complaint and appeal at any time before a decision has been entered on the primary issue of the complaint and appeal.

(d) The assessor of property or taxing jurisdiction also has the right to appeal from any action of the local board of equalization to the state board of equalization in the same manner as provided in subsections (a)-(c).

(e) Appeals to the state board of equalization from action of a local board of equalization must be filed on or before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment. The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.

(f) "Taxpayer" as used in this part or part 15 of this chapter, means the owner of the property under appeal or any lessee legally obligated to pay ad valorem taxes for which the property is liable. A lessee obligated to pay some but not all of the taxes for which the property is liable, may appeal the assessment only if the owner consents to the appeal in writing. A property manager, attorney, or other authorized agent may authorize an appeal if the taxpayer has authorized in writing the property manager, attorney, or other authorized agent to do so.

History.

Acts 1973, ch. 226, § 10; T.C.A., § 67-810; Acts 1986, ch. 585, § 3; 1989, ch. 102, § 1; 1990, ch. 899, § 2; 1991, ch. 161, § 1; 1997, ch. 160, § 5; 1998, ch. 1066, §§ 4, 5; 2004, ch. 737, § 1; 2005, ch. 480, §§ 1-4; 2006, ch. 600, § 1; 2006, ch. 640, §§ 1, 2; 2007, ch. 51, § 1; 2007, ch. 98, § 1; 2007, ch. 111, § 1; 2007, ch. 132, § 4; 2007, ch. 133, § 1; 2011, ch. 32, § 1; 2020, ch. 521, §§ 1, 2.

Amendments.

The 2020 amendment deleted (b)(3) and the following table, which read: "Subdivision (b)(2) shall not apply in any county having the following populations, according to the 2000 federal census or any subsequent federal census:

Not less than	Nor more than
10,980	11,000
11,700	11,800
14,530	14,540

16,000	16,100	53,550	53,570
17,650	17,670	62,300	62,350
19,790	19,800	62,900	63,000
20,100	20,150	91,830	91,850
26,700	26,800	105,800	105,900
27,080	27,150	107,100	108,000
28,790	28,810	125,000	127,000
29,440	29,450	133,000	135,000
29,470	29,480	150,000	160,000
29,860	29,900	182,000	183,000
34,850	34,950	382,000	382,100
35,900	36,000	800,000	900,000";
37,500	37,600		
39,080	39,100		
43,150	43,175		
48,000	48,050		
48,150	48,200		
49,000	49,100		
51,000	51,500		
51,900	51,950		

and in (c), substituted "must" for "shall" in the first sentence, "appellant" for "taxpayer or owner" and "a decision" for "the final order" in the second sentence.

Effective Dates.

Acts 2020, ch. 521, § 5. March 6, 2020.

PART 15

ASSESSMENT REVIEW — STATE BOARD OF EQUALIZATION

67-5-1501. Jurisdiction and duties — Filing of appeals.

(a) The state board of equalization has jurisdiction over the valuation, classification and assessment of all properties in the state.

(b) The board shall have and perform the following duties:

(1) Receive, hear, consider and act upon complaints and appeals made to the board;

(2) Hear and determine complaints and appeals made to the board concerning exemption of property from taxation;

(3) Take whatever steps it deems are necessary to effect the equalization of assessments, in any taxing jurisdiction within the state in accordance with the laws of the state;

(4) Carry out such other duties as are required by law; and

(5) Provide assistance and information on request to members and committees of the general assembly relative to the taxation, classification and evaluation of property.

(c) Appeals to the state board of equalization from initial determinations in exemption and tax relief cases must be filed within ninety (90) days from the date notice of the determination was sent. Appeals from initial decisions of administrative judges or hearing examiners for the state board of equalization must be filed within thirty (30) days from the date the initial decision is sent.

(d) The board shall assess the cost of hearing or processing a taxpayer appeal in an amount not to exceed ten dollars ($10.00) per filing, pursuant to rules of the board. For purposes of this subsection (d), "filing" means one (1) submission that may include multiple parcels, including real and personal property, with a clear nexus to specific assessments or exemptions under appeal. The board shall not charge fees and costs on the appeal of the primary residence of the following persons:

(1) Persons sixty-five (65) years of age or older, if the appraised value of the residence is one hundred fifty thousand dollars ($150,000) or less; and

(2) Indigent persons who file a Uniform Civil Affidavit of Indigency with the board.

History.

Acts 1973, ch. 226, § 10; 1975, ch. 171, § 1; 1979, ch. 64, §§ 1, 2; 1980, ch. 467, § 1; 1983, ch. 237, § 1; T.C.A., § 67-831; Acts 1990, ch. 899, § 3; 1990, ch. 1075, § 1; 1992, ch. 1024, § 2; 1997, ch. 160, § 6; 2003, ch. 406, § 1; 2007, ch. 256, § 1; 2010, ch. 1074, § 2; 2011, ch. 415, § 2; 2013, ch. 209, § 13; 2016, ch. 938, § 1; 2019, ch. 63, § 4.

Amendments.

The 2019 amendment rewrote (d), which read: "(d) The board shall assess the costs of hearing or processing an appeal against any nonprevailing appellant not determined to be indigent, pursuant to rules of the board.

"(1) The assessment shall not exceed seven dollars ($7.00) per parcel for processing an appeal and shall not exceed one hundred twenty dollars ($120) for costs of hearing; provided, that any such assessment for hearing costs shall be proportionate to the value of the property at issue. The board rules shall provide for a total refund of hearing costs if the ordered reduction is one-half (½) or more of the appellant's claim. If the ordered reduction is less than one-half (½) of the appellant's claim, then the refund of hearing costs shall be one-half (½) of the amount paid by the appellant for hearing costs.

"(2) No hearing costs shall be assessed for any appeal that has been withdrawn or for which the parties have agreed to settlement of the appeal prior to a hearing, but additional processing costs may be assessed as follows:

"(A) All the amount otherwise due as hearing costs shall be assessed as additional processing costs if the notice of hearing so states and the appeal is withdrawn or settled within seven (7) days of any scheduled hearing on the merits, unless any party requests postponement of the hearing within fourteen (14) days after the notice of hearing is sent. The board shall reserve and only utilize this procedure for instances where there is a reasonable cause to anticipate that a party may unreasonably delay requesting withdrawal or settlement; and

"(B) In any circumstance other than described in subdivision (d)(2)(A), additional processing costs in the amount of ten dollars ($10.00) shall be due if an appeal is settled.

"(3) In any appeal of a local assessment where the taxpayer is required to file directly with the board, and for which there is no right of first hearing before the county board of equalization, no hearing costs shall be assessed at the first level of hearing, before the hearing officer or administrative judge sitting alone.

"(4) Persons having attained sixty-five (65) years of age or older shall not be charged fees and costs on the appeal of their primary residence if the appraised value is one hundred fifty thousand dollars ($150,000) or less."

Effective Dates.

Acts 2019, ch. 63, § 6. March 28, 2019.

67-5-1502. Assessment appeals commission.

(a) In addition to the powers and duties conferred upon the state board of equalization by § 67-5-1501 or any other provision of this code, the state board of equalization may by resolution create an assessment appeals commission consisting of not less than three (3) nor more than six (6) members, three (3) members of which shall constitute a quorum for the transaction of business, and may delegate to such assessment appeals commission the jurisdiction and duties conferred by law upon the state board of equalization to hear and act upon all complaints and appeals regarding the assessment, classification and value of property for purposes of taxation, including, but not limited to, complaints and appeals from assessments made by the comptroller of the treasury, complaints and appeals from actions of local boards of equalization, complaints and appeals concerning exemption of property from taxation, complaints and appeals from assessments made by the division of property assessments, and complaints in inheritance tax cases that concern only the valuation of property in the estate.

(b)(1) The members of the assessment appeals commission shall be ap-

pointed by the state board of equalization.

(2) Persons who may be appointed to the assessment appeals commission shall be residents of the state and be at least eighteen (18) years of age.

(3) Members of the state board of equalization, the executive secretary to the state board of equalization, the director of property assessment and local and state officials shall not be precluded from appointment to the assessment appeals commission by virtue of their positions.

(4) At least one (1) of the members shall be a person other than a full-time state official.

(c) The state board of equalization shall designate the chair of the assessment appeals commission.

(d) The members of the assessment appeals commission shall take office for a term of one (1) year and until their successors shall take office.

(e) In the event that there is a vacancy in the membership of the assessment appeals commission, the state board of equalization shall fill the vacancy in the same manner as initial appointments.

(f)(1) The assessment appeals commission shall meet at the call of the executive secretary to the state board of equalization.

(2) A majority of the members of the assessment appeals commission shall constitute a quorum.

(g) The assessment appeals commission shall follow such rules and regulations of practice and procedure that may be promulgated by the state board of equalization. The assessment appeals commission may delegate its decision-making authority to a specific panel member when circumstances warrant an evidentiary record to remain open for not more than thirty (30) days after the public hearing.

(h)(1) It is the duty of the members to discharge the duties of the assessment appeals commission without compensation except that persons who are not officials of this state, who may from time to time serve as members of the assessment appeals commission, shall be paid at the rate of ninety-five dollars ($95.00) per day for each day or part of a day in attendance at meetings of the assessment appeals commission.

(2) The members, whether or not they are state officials, shall be reimbursed necessary travel and per diem expenses as prescribed in comprehensive travel regulations by the commissioner of finance and administration for employees of this state, during such service on the assessment appeals commission.

(i)(1) At any time prior to, during or after any proceeding before the assessment appeals commission, authorized by this section, it may certify a question to the state board of equalization if such question is determinative or partially determinative of the proceeding and if such question is found by the assessment appeals commission to be a matter of policy to be determined by the state board of equalization.

(2) Proceedings before the assessment appeals commission may be suspended pending the determination of the question certified to the state board of equalization.

(j)(1) Actions taken by the assessment appeals commission shall be final as if the actions were taken by the state board of equalization; provided, that

the state board of equalization may, in its sole discretion, within forty-five (45) days of any final action taken by the assessment appeals commission, enter an order requiring a review of the action of the assessment appeals commission by the state board of equalization, in which case the action shall not become final until the state board of equalization has rendered its final decision in the matter.

(2) A party desiring the state board of equalization to review an action of the assessment appeals commission must file a written petition with the executive secretary to the state board of equalization within fifteen (15) days of that action of the assessment appeals commission.

(3) The above shall not be construed to limit in any way the authority of the state board of equalization to order a review upon its own motion within forty-five (45) days of an action of the assessment appeals commission.

(4) In the event that the state board of equalization does exercise its discretion to review any action of the assessment appeals commission, review may be upon the record before the assessment appeals commission or in such manner as the state board shall direct.

(k) If the state board of equalization does not exercise its discretion to review a matter heard by the assessment appeals commission, then the assessment appeals commission shall issue a notice pursuant to § 67-5-1512(a)(3), or, upon request, a certificate of assessment or other final certificate of its actions. The date of the notice or certificate shall commence the period for seeking judicial review of the final order of the board or commission.

(*l*)(1) The assessment appeals commission shall prepare and maintain records of its proceedings in the form of minutes.

(2) The minutes, together with all other papers and records of the assessment appeals commission, shall be kept and maintained in the office of the executive secretary to the state board of equalization.

History.

Acts 1973, ch. 226, § 10; 1975, ch. 171, § 1; 1979, ch. 64, §§ 1, 2; 1980, ch. 467, § 1; 1983, ch. 237, § 1; T.C.A., § 67-831; Acts 1986, ch. 749, § 19; 1995, ch. 305, § 126; 1997, ch. 160, § 7; 2007, ch. 482, § 1; 2016, ch. 938, § 2; 2019, ch. 63, § 5.

Amendments.

The 2019 amendment, in (g), substituted "that may be promulgated" for "which may be promulgated" in the first sentence, and added the last sentence.

Effective Dates.

Acts 2019, ch. 63, § 6. March 28, 2019.

67-5-1509. Equalization action by state board.

Attorney General Opinions.

Proposed Senate Bill 2453, 111th Gen. Assem. (2020), as amended, would add the following sentence to Tenn. Code Ann. § 67-5-1509(a): "Except as provided in § 67-5-1302, real property assessments that are under appeal are not eligible for equalization." The proposed amendment is constitutionally problematic because of its effect on appeals for non-reappraisal years. While locally assessed real property is not generally entitled to equalization, the proposed amendment could result in violation of the uniformity requirement of article II, section 28, of the Tennessee Constitution because it would prevent equalization through application of the county's appraisal ratio to all locally assessed real property under appeal. Since the value of property under appeal will be determined as of the year being appealed, the appraisal ratio for that county must be applied to values determined for non-reappraisal years to bring them in line with other real property in the county. OAG 20-10, 2020 Tenn. AG LEXIS 15 (5/20/2020).

67-5-1511. Finality of board action — Collection of taxes — Judicial review.

NOTES TO DECISIONS

1. Applicability.

When a taxpayer contested a property tax assessment, a circuit court's decision had to be vacated because, statutorily, property tax classification and valuation decisions had to be heard in chancery court, as (1) T.C.A. § 4-5-225 did not apply under the facts, and (2) the basis of the taxpayer's petition was the classification and valuation of a property interest for property tax purposes, T.C.A. § 67-5-1511 said no judicial review could be sought without first obtaining a final order from the Tennessee State Board of Equalization (SBOE), and the trial court dismissed the taxpayer's petition because the taxpayer's SBOE appeals were untimely, so the issues fell squarely within the auspices of T.C.A. § 67-5-1511(a), and T.C.A. § 67-5-1511(b) provided any judicial review was to the chancery court. 200 Linden Ave. Props., G.P. v. Johnson, — S.W.3d —, 2018 Tenn. App. LEXIS 558 (Tenn. Ct. App. Sept. 24, 2018).

County's petition for judicial review was subject to the usual standard for judicial review of administrative decisions because the Tennessee State Board of Equalization's denial of a county's motion to set aside an agreed assessment order was not a final ruling on the merits as it did not challenge the merits of the agreed order directly. Anderson Cty. Tenn. v. Tenn. State Bd. of Equalization, — S.W.3d —, 2020 Tenn. App. LEXIS 65 (Tenn. Ct. App. Feb. 14, 2020), appeal denied, — S.W.3d —, 2020 Tenn. LEXIS 533 (Tenn. Sept. 16, 2020).

67-5-1512. Certification of board action — Penalties and interest.

(a)(1) Upon the hearing of any appeal and complaint, the state board of equalization or the assessment appeals commission under § 67-5-1502 having made its determination of the assessment of the property subject to the appeal and complaint, the board shall issue, upon request, an official certificate relative to the action of the state board or the assessment appeals commission, as the case may be.

(2) The official certificate shall show the description of the property and the assessment as determined by the state board of equalization or the assessment appeals commission, as the case may be.

(3) The board shall provide written notice of its final actions on appeals and complaints to the parties and to others upon request. Written notice includes notification by electronic means, and the record of actions or notice may be preserved in digital or electronic format.

(b)(1) Penalty and interest otherwise due on delinquent property taxes does not accrue while an appeal of the assessment is pending before the county or state boards of equalization if the taxpayer, before the delinquency date, pays the undisputed portion or pays the full tax due.

(2) For purposes of this subsection (b), "undisputed portion" means the amount the taxpayer would owe based on the taxpayer's good faith claim for relief.

(3) If the full tax due is paid, the city or county collecting official may decline to accept the disputed portion of tax.

(4) Delinquency penalty and interest postponed under this subsection (b) begins to accrue thirty (30) days after issuance of the final assessment certificate of the state board of equalization and until the tax is paid.

(5) On motion of the city or county to whom tax is owed, the state board of equalization shall dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the

appeal, or who fails to pay at least the undisputed tax related to a properly appealed assessment.

(c) Any additional tax due following the appeal will accrue interest from the delinquency date at the composite prime rate published by the federal reserve board as of the delinquency date, minus two (2) points.

(d)(1) Any tax found refundable following the appeal will accrue interest from the delinquency date at the composite prime rate published by the federal reserve board as of the delinquency date, minus two (2) points.

(2) Sixty (60) days after issuance of the final assessment certificate of the state board of equalization, the interest rate on a deferred refund shall increase two (2) points until the refund is finally paid.

(3) For purposes of this subsection (d), "deferred refund" means the amount owed to the taxpayer, excluding any penalties and interest.

History.

Acts 1973, ch. 226, § 10; 1974, ch. 771, § 11; 1975, ch. 171, § 10; Acts 1980, ch. 533, §§ 1-5; T.C.A., § 67-841; Acts 1986, ch. 627, § 1; 1988, ch. 795, § 19; 1989, ch. 291, § 3; 1989, ch. 550, §§ 3, 22; 1990, ch. 1045, §§ 1, 2, 4; 1993, ch. 315, § 11; 1996, ch. 787, §§ 2, 9, 10; 1997, ch. 197, § 1; 2003, ch. 385, § 1; 2007, ch. 332, § 1; 2008, ch. 680, § 2; 2011, ch. 32, § 2; 2011, ch. 77, § 1; 2014, ch. 691, §§ 3, 4; 2020, ch. 521, §§ 3, 4.

Amendments.

The 2020 amendment rewrote (b), which read: "Penalty and interest otherwise due on delinquent property taxes shall not accrue while an appeal of the assessment is pending before the county or state boards of equalization; provided, that the taxpayer, before the delinquency date, either pays the full tax due or the amount the taxpayer would owe based on the taxpayer's good faith claim for relief. The city or county collecting official may decline to accept the disputed portion of tax. Any tax later found to be refundable, or any additional tax due following the appeal, will accrue interest from the delinquency date at the composite prime rate published by the federal reserve board as of the delinquency date, minus two (2) points. On motion of the city or county to whom the tax is owed, the state board of equalization will dismiss the appeal of any taxpayer who fails to pay delinquent taxes that have accrued on property that is the subject of the appeal, or who fails to pay at least the undisputed tax related to a properly appealed assessment. Taxes related to a properly appealed assessment before the county and state boards of equalization, shall not be deemed delinquent if the taxpayer has paid at least the undisputed portion of tax while the appeal is pending. Delinquency penalty and interest postponed under this section shall begin to accrue thirty (30) days after issuance of the final assessment certificate of the state board of equalization and until the tax is paid."; rewrote (c), which read: "Notwithstanding other provisions of the law, the interest rate on a deferred refund shall increase two (2) points from the date of the deferral sixty (60) days after the board of equalization decision is rendered until the refund is finally paid"; and added (d).

Effective Dates.

Acts 2020, ch. 521, § 5. March 6, 2020.

PART 16

PERIODIC REAPPRAISAL AND EQUALIZATION

67-5-1601. General provisions — Administration — Costs — Penalty for failure to comply.

Attorney General Opinions.

Under T.C.A. § 67-5-1601(c)(2), a city generally is required to pay one half of the local costs of reappraisal of properties within the city. The city and county may agree on a different amount, but the city may not unilaterally choose to pay a lesser amount. Furthermore, the county assessor may not agree to withhold the tax rolls from a city, even if the city has not paid one half of the reappraisal costs of properties within the city as required by T.C.A. § 67-5-1601(c)(2). OAG 17-50, 2017 Tenn. AG LEXIS 50 (11/15/2017).

67-5-1606. Annual overall ratio of appraisal — Ratios for classifications — Public utility properties and operating properties of modern market telecommunications providers.

(a) Based upon the appraisal ratio studies and other pertinent information, the state board of equalization shall annually determine the overall ratio of appraisal for property in each county of the state.

(b) In addition, the board may also determine ratios for the respective classifications of property for each county.

(c) The state board of equalization shall each year certify to the comptroller of the treasury appraisal levels, as are determined by the board for each county, to be used by the office of state assessed properties for purposes of computing the assessments of public utility properties and operating properties of modern market telecommunications providers.

History.

Acts 1980, ch. 827, § 2; 1983, ch. 235, § 2; T.C.A., § 67-685; Acts 1995, ch. 305, § 129; 2017, ch. 490, § 9; 2019, ch. 10, § 1.

Amendments.

The 2019 amendment substituted "office of state assessed properties" for "commission" preceding "for purposes of computing" in (c).

Effective Dates.

Acts 2019, ch. 10, § 2. March 13, 2019.

PART 18

COLLECTION

67-5-1801. Collector — Place of payment — Collection agent — Evidence of taxes — Deposits — Subrogation — Electronic funds transfers.

(a) The county trustee shall act as collector of all county property taxes and of all municipal property taxes when the municipality does not collect its own taxes. A municipality that certifies its delinquent tax list to the trustee or the delinquent tax attorney selected pursuant to § 67-5-2404(a)(1), is deemed to have authorized, without further action of the municipality, county officers to do all things authorized under parts 18-28 of this chapter with respect to the collection of delinquent municipal taxes, including the ability to convey any and all interests of the municipality in the property sold, until such time as the municipality's legislative body determines otherwise and causes a document evidencing the determination to be recorded in the office of the register of deeds. This subsection (a) is procedural and remedial in its application and is made applicable retroactively to the extent allowed by law.

(b) These taxes shall be paid to the trustee at the trustee's office at the county seat or at such other place or places as the trustee may designate. A trustee is authorized to adopt a policy of not accepting current county real property taxes due when delinquent real property taxes are owing; provided, that this prohibition shall not apply when the obligor of one (1) or more of the prior year's taxes is in bankruptcy or there is a dispute as to the responsibility for such taxes.

(c)(1) The county trustee may designate a bank and/or the branches that are located within the county to act as a collection agent for the trustee and

accept the deposit of county and municipal property taxes. The county trustee shall establish an account with the bank for such purpose, which shall be restricted to the deposit of county and municipal property taxes.

(2) The taxpayer shall be required to furnish to the bank evidence of the property taxes that are due and payable and in no case shall such taxes be accepted by the bank when such taxes are delinquent. The bank shall use a deposit form for deposit of property taxes, which shall contain the following language: "In accepting deposits of taxpayers, the bank is acting as an agent for the trustee." The taxpayer will be provided a copy of the deposit form at the time of the deposit. The bank shall provide to the trustee such evidence of the taxes deposited into the account and a copy of the deposit forms at least every three (3) business days.

(3) The county trustee shall determine whether the correct amount of property taxes was deposited into the account and whether interest is due on such property before issuance of the tax receipt to the taxpayer.

(4) The taxpayer making a payment of property taxes in such manner is not relieved of interest upon failure of the bank to provide evidence of the deposit of such taxes prior to the due date.

(d) When any person pays property taxes that are the legal obligation of a third party by mistake, inadvertence or otherwise, the person making the payment is subrogated to the rights of the government to which the property taxes are paid, against the person whose property taxes were paid. However, at any judicial sale of such property, the clerk shall not enter a bid as provided in § 67-5-2506, or any other provision of law, on behalf of any government entity.

(e)(1) Any county trustee may accept partial payments of property taxes.

(2) Prior to any county trustee accepting partial payment of property taxes, the county trustee shall file a plan with the comptroller of the treasury. The plan shall indicate that the county trustee's office has the accounting system technology to implement a program for partial payment of property taxes. The plan shall also indicate whether such a program will be implemented within the existing operating resources of the office or indicate prior approval of the county legislative body if additional operating resources are needed. This subdivision (e)(2) does not apply to any county which has implemented a partial payment program prior to April 19, 1995.

(3) A county trustee may accept taxes paid by electronic funds transfer, including, but not limited to, bank customer preauthorized payments, wire transfers or ACH credits. If the entire amount of taxes due is not paid prior to the delinquency date for such taxes, the entire property shall be subject to the tax lien and enforcement by a tax sale or other legally authorized procedures. Unless partial payment is made by electronic transfer of funds, if the county trustee accepts partial payment within ten (10) days of the delinquency date, or at any time following such delinquency date, then prior to accepting such payment the county trustee must inform the taxpayer of the delinquency date and must advise such taxpayer that the property may be subjected to tax lien and enforcement by tax sale or other legally authorized procedures.

(4) Direct bank transfers and partial payments are subject to the following guidelines:

(A) Vouchers issued pursuant to the tax relief program shall be used as all or a portion of the final payment;

(B) A receipt shall be issued to the taxpayer for any partial payment of taxes. The receipt shall state that:

(i) The payment is a partial payment of property taxes;

(ii) The balance owing on such taxes that must be paid prior to the delinquency date; and

(iii) A failure to pay the entire amount of the taxes prior to the delinquency date subjects any unpaid taxes to the interest applicable to delinquent taxes and subjects the entire property on which there is a lien for taxes to a tax sale. The final partial payment shall show that a zero (0) balance is owing or shall state that the taxes are paid in full. Receipts shall also be sent to the taxpayer for payments made by direct bank transfer of funds; and

(C) In any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, the trustee may set a minimum requirement of no more than the lesser of fifteen percent (15%) or twenty-five dollars ($25.00) for any partial payment.

History.

Acts 1875, ch. 91, § 1; 1907, ch. 602, § 47; integrated in Shan., § 865a1; Code 1932, § 1546; modified; T.C.A. (orig. ed.), § 67-1104; Acts 1987, ch. 346, § 4; 1993, ch. 78, § 1; 1993, ch. 315, § 23; 1994, ch. 812, § 1; 1995, ch. 111, §§ 1, 2; 1995, ch. 259, § 1; 1996, ch. 787, §§ 1, 5, 8; 1997, ch. 187, §§ 1-3; 2019, ch. 170, § 1; 2019, ch. 220, §§ 3-6.

Amendments.

The 2019 amendment by ch. 170, in (a), substituted "the delinquent tax attorney selected pursuant to § 67-5-2404(a)(1), is deemed to have authorized, without further action of the municipality, county officers to do all things authorized under parts 18-28 of this chapter" for "delinquent tax attorney may authorize the county officers, including the court clerk at a delinquent tax sale and the committee established in § 67-5-2507(b), to do all things authorized under this chapter" and substituted "any and all interests of the municipality in the property sold, until such time as the municipality's legislative body determines otherwise and causes a document evidencing the determination to be recorded in the office of the register of deeds" for "any interest of the municipality in the property sold" in the second sentence, and added the last sentence.

The 2019 amendment by ch. 220, in (c)(2), deleted "on a daily basis" and added "at least every three (3) business days"; substituted "interest is due" for "interest and penalty are due" in (c)(3); substituted "is not relieved of interest" for "shall not be relieved of penalty and interest" in (c)(4); and deleted "penalties and" in the first sentence of (e)(4)(B)(iii).

Effective Dates.

Acts 2019, ch. 170, § 10. April 18, 2019.

Acts 2019, ch. 220, § 8. July 1, 2019.

Cross-References.

Collection of taxes on utilities and carriers, §§ 67-5-1331, 67-5-1332, 67-5-1334.

67-5-1808. Partial payment of property taxes.

(a) Notwithstanding any general law or any private act to the contrary, the county trustee may accept partial payments of property taxes, including, but not limited to, payment by electronic transfers, bank customer preauthorized payments, wire transfers or ACH credits, for the current tax year prior to the date the tax rate is established for the current tax year. Any partial payment of property taxes for the current tax year that is received before the later of July 1 or the date the property tax rate for the current year is established shall be held in a designated revenue account established to hold undistributed taxes and then transferred to the revenue account established for the current

year's taxes after the later of July 1 or the date the property tax rate for the current year is adopted by the county legislative body.

(b) Prior to any county trustee accepting partial payment of property taxes in accordance with this section, the county trustee shall file a plan with the comptroller of the treasury at least thirty (30) days prior to the acceptance of the payments. The comptroller of the treasury must acknowledge the receipt of the plan and provide written comments regarding the plan to the trustee prior to implementation. The plan should contain the following:

(1) A description of the accounting system technology or manual processes to be used to record partial payments of property taxes for the current tax year prior to the date the tax rate is established;

(2) A statement indicating whether such a process of collecting property taxes will be implemented within the existing operating resources of the office or an indication of prior approval by the county legislative body if accounting system upgrades or additional operating resources are needed; and

(3) Documentation of the internal controls that will ensure all property tax payments are being recorded and accounted for as required by law.

(c)(1) The delinquent date for property taxes and interest applicable to delinquent property taxes is not affected by application of a partial payment system established in such county.

(2) Interest applies only to the amount of delinquent property taxes remaining due as of the date property taxes become delinquent.

(d) If a partial payment of property taxes is accepted, such partial payment does not release the tax lien on the property upon which the taxes were assessed.

(e) This section shall become effective upon the adoption of a resolution by two-thirds (⅔) vote of the county legislative body of any county to which it may apply. The presiding officer of the county legislative body shall certify a copy of the resolution to the secretary of state.

History.

Acts 1990, ch. 922, § 1; 2008, ch. 698, § 1; 2009, ch. 71, § 1; 2019, ch. 220, § 7.

Amendments.

The 2019 amendment, in (c)(1), deleted "penalties and" and substituted "is not affected" for "shall not be affected"; and substituted "Interest applies" for "Penalties and interest shall apply" at the beginning of (c)(2).

Effective Dates.

Acts 2019, ch. 220, § 8. July 1, 2019.

PART 19

ACCOUNTING AND SETTLEMENT

67-5-1903. Annual report of delinquent taxes and double assessments.

(a)(1) Annually, at the July meeting of the county legislative body, the trustee shall present a report to the county legislative body of all delinquent taxes and double assessments in the county. This report shall be verified by affidavit of the trustee and filed with the county clerk.

(2) The report shall be spread upon the minutes of the county legislative body and municipality, respectively.

(b)(1) The county legislative body shall proceed to examine the report, and shall allow the trustee a credit for such taxes so reported insolvent or delinquent and for double assessments, as it may be satisfied remain uncollected without the default of the trustee, and no more.

(2) The county legislative body shall not allow the trustee a credit for any item on the report, even though duly sworn to by the trustee, if, after examining each credit, the county legislative body has knowledge or information showing the item to be inaccurate.

(c) A list of such allowances shall be made out and certified by the county clerk and transmitted to the proper authorities of the state, county and municipality, respectively.

(d) All of the items for which the county legislative body shall not allow a credit shall be charged against the trustee; and, notwithstanding the county legislative body may have allowed the trustee credits, such acts shall not operate as an estoppel in the event that it should afterwards appear that such credit was improperly allowed; provided, that no such items for which the county legislative body shall have allowed credit shall be charged against or collected from any surety on the bond of any such trustee.

(e) The report referred to in this section must not include delinquent taxes that have been delivered by the trustee to the delinquent tax attorney for the filing of court actions to collect the taxes.

History.

Acts 1907, ch. 602, § 69; Shan., §§ 922-922a5; mod. Code 1932, §§ 1627-1632; Acts 1933, ch. 95, § 1; C. Supp. 1950, § 1632; T.C.A. (orig. ed.), §§ 67-1413 — 67-1416; Acts 1987, ch. 346, §§ 12, 13; 2019, ch. 170, § 2.

Amendments.

The 2019 amendment, substituted "taxes" for "taxpayers" in the first sentence of (a); and added (e).

Effective Dates.

Acts 2019, ch. 170, § 10. April 18, 2019.

67-5-1904. [Repealed.]

History.

Code 1858, §§ 648-652; Shan., §§ 916a3, 917-920; mod. Code 1932, §§ 1622-1626; impl. am. Acts 1937, ch. 33, § 50; impl. am. Acts 1959, ch. 9, § 14; modified; T.C.A. (orig. ed.), §§ 67-1417 — 67-1420; Acts 2003, ch. 90, § 2; repealed by Acts 2019, ch. 220, § 1, effective July 1, 2019.

Compiler's Notes.

Former § 67-5-1904, concerned credits to trustee on settlement with state.

PART 20

DELINQUENT TAXES

67-5-2004. Collection by garnishment — Retention of collection agent.

(a) The officers to whom the delinquent lists are so delivered may proceed against the delinquent taxpayers by garnishment proceedings, returnable before any general sessions court in the district where the delinquent resides, or to any court, which garnishment shall run in the name of the state for its own behalf and for the use and benefit of the county.

(b) **[Subsection (b) repealed effective July 1, 2024.]** (1)(A) The county trustee may proceed against a taxpayer who is delinquent in the payment of tangible personal property taxes by retaining an agent to collect such delinquent tangible personal property taxes, plus interest authorized by law, reasonable costs, and legal fees, provided that the collection activities are in compliance with this subsection (b).

(B) If a collection agent is retained, the county trustee shall utilize the bidding procedures applicable to the county to select and retain the agent and shall notify the county legislative body of such action. The agent's collection fee shall not exceed thirty percent (30%) of tangible personal property taxes due, and the fee must be added to the total amount of delinquent tangible personal property taxes owed, plus interest authorized by law, reasonable costs, and legal fees.

(C) A contract or other arrangement entered into to retain a collection agent under this subsection (b) shall not provide that the compensation paid to the agent is conditioned on increasing tangible personal property tax collections in the county involved. A contract found to contain such language is void and unenforceable.

(D) An agent shall not communicate with the delinquent taxpayer or proceed upon the delinquent taxpayer's property unless authorization to take such action is provided in the contract. The agent shall not institute or undertake a collection or related activity in violation of the Tennessee Collection Service Act, compiled in title 62, chapter 20.

(E) An agent retained pursuant to this subsection (b) must be licensed and in good standing with the Tennessee collection service board.

(F) All foreclosures, seizures, litigation, or other judicial or non-judicial proceedings to enforce a tax lien or any similar rights to collect delinquent tangible personal property taxes, plus interest authorized by law, reasonable costs, and legal fees, must be in the name of the taxing jurisdiction as the plaintiff or claimant.

(G) An agent who also performs audit procedures shall not be retained to collect delinquent tangible personal property taxes under this section.

(2) This subsection (b) is repealed on July 1, 2024.

History.
Acts 1923, ch. 77, § 4; Shan. Supp., § 913b3; Code 1932, § 1577; T.C.A., § 67-130; Acts 2021, ch. 522, § 1.

Amendments.
The 2021 amendment added (b).

Effective Dates.
Acts 2021, ch. 522, § 2. May 25, 2021.

PART 24

TAX LIEN — ENFORCEMENT GENERALLY

67-5-2404. Delivery of delinquent tax list to attorney — Appeals.

(a)(1) After the publication of the notice in § 67-5-2401, and between the dates of February 1 and April 1, the trustee shall deliver the delinquent lists showing all unpaid land taxes to an attorney chosen by the trustee with the

approval of the county mayor.

(2) Compensation of the attorney shall be determined in advance through negotiations between the trustee and the attorney, subject to the approval of the county legislative body, but in no event shall such compensation exceed ten percent (10%) of all delinquent land taxes collected.

(3) It is the duty of the county trustee and the county mayor to cause the attorney to prepare and file suits in the chancery or circuit court for the collection of all delinquent land taxes, and all arrears of taxes due the state, county and municipality.

(4) In order that delinquent and municipal taxes may be collected at the same time as other taxes, it is the duty of the proper municipal officers to furnish the county trustee or the trustee's attorney certified lists of delinquent municipal taxes, unless otherwise provided.

(5) This subsection (a) shall not apply to counties with a metropolitan form of government or to counties having the following populations according to the 1970 federal census or any subsequent federal census:

not less than	nor more than
3,765	5,200
6,600	6,700
8,100	8,200
12,300	12,350
12,400	12,550
14,700	14,800
36,900	37,100
56,200	56,300

(b)(1) After the publication of the notice in § 67-5-2401, and between the dates of February 1 and April 1, the trustee shall deliver the delinquent lists showing all unpaid land taxes to an attorney chosen by the trustee with the approval of the county mayor, and it shall be the duty of the county trustee and the county mayor to cause the attorney to prepare and file suits in the chancery or circuit court for the collection of all delinquent land taxes, and all arrears of taxes due the state, county and municipality; and, so that delinquent and municipal taxes may be collected at the same time as other taxes, it shall be the duty of the proper municipal officers to furnish the county trustee or the trustee's attorney certified lists of delinquent municipal taxes, unless otherwise provided.

(2) This subsection (b) shall apply only to counties with a metropolitan form of government and to counties having the following populations according to the 1970 federal census or any subsequent federal census:

not less than	nor more than
3,765	5,200
6,600	6,700
8,100	8,200
12,300	12,350
12,400	12,550

14,700	14,800
36,900	37,100
56,200	56,300

(c)(1) Upon written agreement between the county trustee and the clerk of the court where suit has been filed for collection of delinquent taxes, the county trustee may continue to collect delinquent property taxes, including penalty and interest due, regarding any property included on the delinquent tax list delivered by the county trustee to an attorney for the filing of suits for collection until such property has been sold at a delinquent tax sale if the offices of the court clerk and the county trustee have computer systems that are sufficiently connected so as to enable the county trustee to collect the correct amount of taxes, penalties, and interest due. The county trustee shall pay over to the court clerk the entire amount so collected pursuant to such agreement and the court clerk shall allocate such amount as if the moneys were collected by the court clerk. This subsection (c) shall only apply to any county having a population of not less than one hundred thirty-four thousand seven hundred (134,700) nor more than one hundred thirty-four thousand eight hundred (134,800), according to the 2000 federal census or any subsequent federal census, upon adoption of a resolution by a two-thirds (⅔) vote of the county legislative body authorizing the county trustee to collect delinquent property taxes as provided in this subsection (c).

(2) Upon written agreement between the county trustee and the clerk of the court where suit has been filed for collection of delinquent taxes, the county trustee may continue to collect delinquent property taxes, including penalty, interest, fees, and costs on all property included on the delinquent list delivered by the county trustee to the delinquent tax attorneys appointed for the filing of suits until the time such properties are sold in a delinquent tax sale. The county trustee shall pay over or allocate to the court clerk the entire amount so collected pursuant to such agreement and the court clerk, or the county trustee pursuant to such agreement, shall allocate such amount as if the moneys were collected by the court clerk. This subdivision (c)(2) shall apply to any county having over three hundred thousand (300,000) tax parcels, upon adoption of a resolution by a two-thirds (⅔) vote of the county legislative body authorizing the county trustee to collect delinquent taxes as provided in this subdivision (c)(2).

(d) If a taxpayer or other adverse party to the tax entity appeals a judgment or other order in an action to collect or enforce a lien for unpaid taxes, or files suit for recovery pursuant to chapter 1, part 9 of this title, or to set aside a tax sale pursuant to § 67-5-2504, the court may, in its discretion, and upon the tax entity prevailing in such action, award reasonable attorneys' fees in addition to the compensation set forth in this section. Any request for such fees shall be supported by affidavit and such fees shall become additional expenses of the tax suit for the purposes of § 67-5-2410(d), and shall be secured by the lien in favor of the tax entity as costs accruing on the taxes pursuant to § 67-5-2101(a). Nothing in this subsection (d) shall be construed as authorizing an award of attorney's fees in favor of a taxpayer or other adverse party to the tax entity.

(e) The maximum compensation provisions in this section and §§ 67-5-2410, 67-5-2501, and 67-5-2506 shall not be applicable to nor limit fees or expenses authorized by the court to be paid to the delinquent tax attorney pursuant to subsection (d), §§ 67-5-2410(d), 67-5-2502(c)(2), 67-5-2701(*l*), and 67-5-2702(g) or any other law. This subsection (e) is intended to be procedural and remedial in its application and is made applicable retroactively to the extent allowed by law.

History.
Acts 1923, ch. 77, § 6; Shan. Supp., § 913b14; mod. Code 1932, § 1588; Acts 1975, ch. 32, § 1; 1978, ch. 869, §§ 1, 6-8; impl. am. Acts 1978, ch. 934, §§ 16, 36; T.C.A. (orig. ed.), § 67-2002; Acts 1987, ch. 392, § 1; 2003, ch. 90, § 2; 2004, ch. 591, § 1; 2013, ch. 353, § 12; 2014, ch. 708, § 1; 2015, ch. 93, § 1; 2019, ch. 170, § 3.

Amendments.
The 2019 amendment added (e).

Effective Dates.
Acts 2019, ch. 170, § 10. April 18, 2019.

67-5-2415. Notice to taxpayer of suit.

NOTES TO DECISIONS

3. No Service.
County failed to comply with the statutory requirements for notice of a tax lien suit under T.C.A. §§ 67-5-2415, 67-5-2502, and 21-1-203(a), having had an incorrect address which led to a failure to serve the landowner personally or by mail, and because none of the methods employed by the county were reasonably calculated to provide the landowner with notice, the attempts could not support constructive service by publication. Owens v. Hamilton Cty., — S.W.3d —, 2018 Tenn. App. LEXIS 690 (Tenn. Ct. App. Nov. 28, 2018).

PART 25
TAX LIEN — SALE OF PROPERTY

67-5-2502. Notice of sale of land.

(a)(1) In the event of a sale under a decree of the court, the property shall be advertised in one (1) sale notice, which notice shall set out the names of the owners of the different tracts or parcels of land and describe the property and set out the amount of judgment against each defendant. The description of the property shall include a concise description, that means a reference to a deed book and page that contains a complete legal description of the property or the official property number as provided by § 67-5-806, and may also include a common description of the property, which may include street name and number, map and parcel number, number of acres, or any other description which might help identify the property as it is commonly known. The purpose of the common description is to help identify the property that is described in the concise description. Any error or defect in the common description shall not in any way void any sale of the property; provided, that the concise description makes accurate reference to the last conveyance of the property by correct reference to a deed book and page or the official property number as provided by § 67-5-806.

(2) A notice of the tax sale shall be published at least once in a newspaper of general circulation in the county where the parcels are located, or, with the approval of the court, the notice may be published by printed handbills

publicly posted in the county where the parcels are located in such manner as the court may determine will provide adequate public awareness of the sale. Any such publication shall first occur at least twenty (20) days before the sale date.

(3) Notice to parties or others in delinquent tax suits and sales shall be governed by the Tennessee Rules of Civil Procedure, except as modified in this chapter or as they may be inconsistent with the statutory scheme for the collection of delinquent property taxes set out in this chapter, and may be forwarded to the address of an owner of the property that is on record in the office of the assessor of property. If there is any remainder after the proceeds of the sale have been distributed pursuant to § 67-5-2501, the party receiving notice pursuant to this subdivision (a)(3) shall also be given notice of the amount of proceeds resulting from the sale, the division of such proceeds, and the remainder.

(4) A person, who is either expressly or impliedly authorized by another person to receive mail on behalf of the other person, is authorized to sign a receipt on behalf of the other person accepting registered or certified mail or correspondence delivered by an alternative delivery service, containing either a summons, complaint, or summary of the proceeding or a notice that has been or is to be filed in a tax proceeding. In every tax proceeding, the burden of proving by clear and convincing evidence that a person who signed such a receipt for a different person and was, in fact, at that time expressly prohibited in writing from accepting mail for the second person, shall be upon the person challenging the sufficiency of the service or notice.

(5)(A) Service on or notice to a nominee or agent of an owner, where the nominee or agent is identifiable from information provided in the deed or deed of trust, shall constitute service on or notice to the owner.

(B) Service on or notice to a nominee or agent of an owner, where the nominee or agent is identifiable from information provided in the deed or deed of trust, shall constitute service on or notice to all assignees of the owner if evidence of the assignment has not been recorded in the office of the register of deeds in the county where the parcel is located.

(C) This subdivision (a)(5) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

(6) The clerk or special master conducting the sale may, on suggestion of the delinquent tax attorney, withdraw any parcel from the sale.

(b) It is the responsibility of the property owner to register the property owner's name and address with the assessor of property of the county in which the land lies.

(c)(1) For the purposes of this chapter, unless the context requires otherwise:

(A) "Diligent effort to give actual notice of the proceedings" means a reasonable effort to give notice which is reasonably calculated, under all the circumstances and conditions, to apprise interested persons of the pendency of the proceedings in time to afford them an opportunity to prevent the loss of their interest in the parcel. Such effort shall be such as one desirous of actually informing the persons might reasonably adopt to accomplish it. Such effort does not, however, require that an interested

person receive actual notice. Nor does it require the plaintiff to search records or sources of information in addition to that information available in the specific offices listed in subdivision (c)(2);

(B) "Interested person", "person owning an interest in a parcel" and "owner" means a person, including any governmental entity, that owns an interest in a parcel and includes a person, including any governmental entity, that holds a lien against a parcel or is the assignee of a holder of such a lien. "Interested person" also includes a person or entity named as nominee or agent of the owner of the obligation that is secured by the deed or a deed of trust and that is identifiable from information provided in the deed or a deed of trust, which shall include a mailing address or post office box of the nominee or agent. However, a person named as a trustee under a deed of trust, contract lien or security instrument, is not included in such definition unless the person has a separate interest in the parcel;

(C) "Parcel" means a tract or item of real or personal property which is the subject of a judicial proceeding to obtain a personal judgment for the taxes owing or to enforce the lien securing the payment of delinquent property taxes by a sale of the tract or item; and

(D) "Proceeding" and "proceedings" means a judicial proceeding filed by a governmental entity for the purpose of collecting delinquent property taxes owing the entity or including the enforcement of the first lien securing such taxes. The court shall have jurisdiction to determine all issues arising in the proceedings including issues arising before and after the confirmation of the sale of a parcel, including redemption, disposition of excess proceeds and all issues arising pursuant to § 67-5-2507.

(2) The delinquent tax attorney shall make a reasonable search of the public records in the offices of the assessor of property, trustee, the register of deeds, and the local office where wills are recorded, seeking to identify and locate all interested persons as to each parcel listed on the county and municipal delinquent tax lists filed in the cause. The court shall set a reasonable attorney's fee per parcel, as defined in subdivision (c)(1), per year of delinquent taxes owed and per taxing entity, for the services required by this subsection (c), which shall become an additional expense of the proceeding and shall be secured by the first lien in favor of the tax entity pursuant to § 67-5-2101. The fee shall be charged to each pending parcel listed on the county and municipal delinquent tax lists filed in the tax proceeding and each parcel subsequently turned over for collection in a tax proceeding.

(3) The delinquent tax attorney shall make a diligent effort to give actual notice of the proceedings to all interested persons, as identified by the searches described in subdivision (c)(2).

(d) A tax sale notice, which shall be the same or substantially the same as the advertised notice, may be recorded in the register of deeds' office for the county in which the property is located upon the setting of the tax sale date. The recording cost shall be divided between the parcels of land listed in the tax sale notice and added as an additional court cost to each such parcel of land. This tax sale notice shall be recorded for informational purposes only and no release shall be required.

(e)(1) Any owner of a surface interest in property overlying a mineral interest may record a declaration of the owner's interest in such land with

the register of deeds in the county where the mineral interest is located. Declaration forms shall be available at the register's office and shall include the name of the owner of mineral interest beneath the surface. Declaration forms received by the register's office shall be recorded by the register in the dormant mineral interest record. Declaration forms shall be indexed under the names of the mineral interest owners as grantor or grantors and under the names of the surface owners as grantee or grantees. Recording the declaration of surface ownership shall entitle surface owners to receive notice described in subdivision (e)(2).

(2) In the event of the sale of severed mineral interest property pursuant to § 67-5-2501, the clerk of the court shall send, by certified return receipt mail, a notice of proceedings regarding the sale of that mineral interest to any owner of the surface interest who has recorded a declaration of surface ownership as described in subdivision (e)(1).

(3)(A) The owner of surface interest who has recorded a declaration of surface ownership according to subdivision (e)(1), and who has received notice of delinquent tax proceedings according to this section may, within one hundred twenty (120) days after the sale pursuant to § 67-5-2501, purchase the mineral interest beneath the owner's tract for a percentage of the total amount of such sale, which percentage shall be derived from the percentage that the owner's surface interest bears to the total surface area of the property connected with the mineral interest sold at such tax sale.

(B) Such surface owner shall tender to the clerk of court such amount, including a pro-rated amount of the penalty and interest paid, at the same percentage rate. The clerk shall, within thirty (30) days of receipt of such amount pay the same amount to the person who purchased the mineral interest at the tax sale. The surface owner shall, in addition, pay the clerk for the clerk's services in such transaction.

(f) Any sale under this section may be adjourned and rescheduled one (1) time for cause without an additional newspaper publication or decree, upon compliance with the following provisions:

(1) The sale must be held within one (1) year of the originally scheduled date;

(2) The postponement or adjournment must be to a specified date and time, and must be posted or announced at the date, time, and location of the scheduled sale date; and

(3) If the postponement or adjournment is for more than thirty (30) days, notice of the new date, time, and location must be mailed no less than ten (10) calendar days prior to the sale date via regular mail to the parties to the suit, with a copy of such notice filed with the clerk of court.

History.

Acts 1923, ch. 77, § 12; Shan. Supp., § 913b21; Code 1932, § 1596; Acts 1976, ch. 695, § 1; 1980, ch. 629, § 1; T.C.A. (orig. ed.), § 67-2018; Acts 1984, ch. 661, § 1; 1984, ch. 868, § 1; 1987, ch. 282, § 3; 1987, ch. 346, § 8; 1988, ch. 636, §§ 17-19; 1991, ch. 470, § 3; 1994, ch. 579, §§ 2-6; 1996, ch. 787, § 3; 1998, ch. 894, § 1; 2013, ch. 353, § 17; 2014, ch. 599, § 1; 2014, ch. 883, §§ 9, 10; 2015, ch. 213, § 3; 2015, ch. 414, §§ 9, 11; 2017, ch. 299, § 9; 2018, ch. 778, §§ 4, 5; 2019, ch. 170, § 4.

Amendments.

The 2019 amendment, rewrote (c)(2) which read: "(2) The delinquent tax attorney shall

make a reasonable search of the public records in the offices of the assessor of property, trustee, the register of deeds and the local office where wills are recorded, seeking to identify and locate all persons owning an interest in a parcel. The court shall set a reasonable attorneys fee for the services required by this subsection (c) which shall become an additional expense of the proceedings for the purposes of § 67-5-2410(d) and shall be secured by the first lien in favor of the tax entity as costs accruing on the taxes pursuant to § 67-5-2101(a)."

Effective Dates.

Acts 2019, ch. 170, § 10. April 18, 2019.

NOTES TO DECISIONS

4. No Service.

County failed to comply with the statutory requirements for notice of a tax lien suit under T.C.A. §§ 67-5-2415, 67-5-2502, and 21-1-203(a), having had an incorrect address which led to a failure to serve the landowner personally or by mail, and because none of the methods employed by the county were reasonably calculated to provide the landowner with notice, the attempts could not support constructive service by publication. Owens v. Hamilton Cty., — S.W.3d —, 2018 Tenn. App. LEXIS 690 (Tenn. Ct. App. Nov. 28, 2018).

67-5-2503. Sale of land — Writ of possession — Rents and profits.

(a) An order confirming the sale of a parcel shall confer the right to possession of the parcel to the purchaser effective upon entry of the order. On such date, the risk of loss shall transfer from the original owner to the purchaser. In the event of a loss occurring after the sale and before the order confirming the sale is entered, the court shall, on motion of the purchaser filed before the order confirming the sale becomes final, determine whether any portion of the purchaser's bid should be refunded to the purchaser.

(b) A writ of possession shall, upon application of the purchaser, in a proper case, be ordered by the court in which the tax sale has been made. A purchaser not making an advance demand for rents or profits shall have no rights to rents or profits from a taxpayer who has remained in possession during the redemption period.

History.

Acts 1907, ch. 602, § 64; Shan., § 913a48; mod. Code 1932, § 1612; T.C.A. (orig. ed.), § 67-2019; Acts 1991, ch. 470, § 2; 2015, ch. 414, § 12; 2019, ch. 170, § 5.

Amendments.

The 2019 amendment, substituted "not making an advance demand for rents or profits" for "not taking actual possession of the property" in the second sentence of (b).

Effective Dates.

Acts 2019, ch. 170, § 10. April 18, 2019.

67-5-2504. Attacks on sale of land — Rights of purchaser.

NOTES TO DECISIONS

1. Effect of Section.

City's payment discharged its responsibilities under the statute and the order of the trial court, and the buyer was not entitled to additional interest; he chose not to retrieve the funds while the case was on appeal or during the ensuing remand, nor did he seek to have the funds invested in an interest bearing account. Scott v. Ditto, — S.W.3d —, 2018 Tenn. App. LEXIS 711 (Tenn. Ct. App. Dec. 6, 2018).

67-5-2505. Lien rights of non-governmental entity when property bought by county with population of not less than 27,200 or not more than 27,300 at tax sale.

(a) Whenever a county with a population of not less than twenty-seven thousand two hundred (27,200) nor more than twenty-seven thousand three hundred (27,300), according to the 2010 census or any subsequent census, acquires property at a tax sale, any non-governmental entity holding a vested and duly recorded contractual right to the payment of fees or assessments secured by such property retains such right; provided, that the non-governmental entity may only enforce such contractual rights against the county through the exercise of its lien rights against the property.

(b) Notwithstanding subsection (a), a county with a population of not less than twenty-seven thousand two hundred (27,200) nor more than twenty-seven thousand three hundred (27,300), according to the 2010 census or any subsequent census, is liable for the payment of the fees and assessments described in subsection (a) if the county makes actual use of the property purchased at the tax sale.

History.
Acts 2019, ch. 419, § 1.

Compiler's Notes.
For Preamble to the act concerning property bought by a county at a tax sale, see Acts 2019, ch. 419.

For table of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Effective Dates.
Acts 2019, ch. 419, § 2. May 21, 2019.

67-5-2506. Sale of land for county taxes only.

(a)(1) When any land must be sold for payment of delinquent county taxes only, it shall be sold under the provisions of this part and parts 20 and 24 of this chapter so far as they apply.

(2) It is the duty of the clerk of the court ordering the sale to bid, on behalf of the governmental entities for which the taxes are owing, to ascertain the amount due for taxes, interest, penalties and costs, where no other bidder offers the same or higher bid; provided, that, in the case of property where the county legislative body has determined that no bid should be made on behalf of the governmental entities to which taxes are owing due to a determination that such property poses an environmental risk or has financial liabilities associated with the property such that it is not in the best interest of the county to take possession of the property, the clerk shall not offer a bid. The county legislative body may also make a determination that no bid shall be made on behalf of the governmental entities on nonbuildable or nonconforming parcels, including, without limitation:

(A) Storm water detention basins;
(B) Drainage ditches;
(C) Private road right-of-ways;
(D) Private drives;
(E) Common open areas; and
(F) Utility easements.

(3) Up to ten percent (10%) of the sale proceeds shall be applied, first, to payment of any unpaid balance of compensation due the prosecuting

attorney; second, the proceeds of the sale shall be applied to the costs of the suits; and third, the remainder shall be applied to the county first and second, to any municipality having a tax lien on the same property.

(4) This subsection (a) does not apply to counties with a metropolitan form of government or to counties having the following populations, according to the 1970 federal census or any subsequent federal census:

not less than	nor more than
3,765	5,200
6,600	6,700
8,100	8,200
12,300	12,350
12,400	12,550
14,700	14,800
36,900	37,100
56,200	56,300

(b)(1) When any parcel is sold for payment of delinquent taxes, it shall be sold pursuant to this chapter. This subdivision (b)(1) is procedural and remedial in its application and is made applicable retroactively to the extent allowed by law.

(2) It is the duty of the clerk of the court ordering the sale to bid, on behalf of the governmental entities for which the taxes are owing, to ascertain the amount due for taxes, interest, penalties and costs, where no other bidder offers the same or higher bid; provided, that, in the case of property where the county legislative body has determined that no bid should be made on behalf of the governmental entities to which taxes are owing due to a determination that such property poses an environmental risk, the clerk shall not offer a bid.

(3) The proceeds from such sale shall be applied, first, to the payment of the penalty allowed as compensation for prosecuting the suits; second, to the costs; and third, the remainder shall be prorated, first, to the county and, second, to any municipality that has a tax lien thereon.

(4) This subsection (b) applies only to counties with a metropolitan form of government and to counties having the following populations, according to the 1970 federal census or any subsequent federal census:

not less than	nor more than
3,765	5,200
6,600	6,700
8,100	8,200
12,300	12,350
12,400	12,550
14,700	14,800
36,900	37,100
56,200	56,300

History.
Acts 1949, ch. 193, § 1; C. Supp. 1950, § 1612.2 (Williams, § 1051.1); Acts 1978, ch. 869, §§ 5-8; T.C.A. (orig. ed.), § 67-2033; Acts 1996, ch. 787, § 4; 2014, ch. 825, § 1; 2016, ch. 1085, § 2; 2019, ch. 170, § 6.

Amendments.
The 2019 amendment, rewrote (b)(1) which read: "(1) When any land must be sold for payment of delinquent county taxes only, it shall be sold under the provisions of this part and parts 20 and 24 of this chapter so far as they apply."

Effective Dates.
Acts 2019, ch. 170, § 10. April 18, 2019.

PART 27
REDEMPTION

67-5-2701. Procedure for redemption of property.

(a)(1)(A) Upon entry of an order confirming a sale of a parcel, a right to redeem shall vest in all interested persons. The right to redeem shall be exercised within the time period established by this subsection (a) beginning on the date of the entry of the order confirming the sale, but in no event shall the right to redeem be exercised more than one (1) year from that date. The redemption period of each parcel shall be determined by the court prior to the tax sale of the parcel and may also be stated in the order confirming the sale.

(B) Unless the court finds sufficient evidence to order a reduced redemption period pursuant to this section, the redemption period for each parcel shall be one (1) year.

(C) The redemption period shall be determined for each parcel based on the period of delinquency. Once the period of delinquency is established, the redemption period shall be set on the following scale:

(i) If the period of delinquency is five (5) years or less, the redemption period shall be one (1) year from the entry of the order confirming the sale;

(ii) If the period of delinquency is more than five (5) years but less than eight (8) years, the redemption period shall be one hundred eighty (180) days from the entry of the order confirming the sale; or

(iii) If the period of delinquency is eight (8) years or more, the redemption period shall be ninety (90) days from the entry of the order confirming the sale.

(D) For all property for which a showing is made pursuant to subdivision (a)(2), the redemption period shall be thirty (30) days from the entry of the order confirming the sale without regard to the number of years of delinquent taxes owed on the property, beyond that required to make the property legally eligible for the sale.

(2) A reasonable basis to believe that real property is vacant, or, in the case of vacant land, a reasonable basis to believe that the property is abandoned, shall, at a minimum, be based upon periodic inspections of the property over a two-month period at different times of the day where three (3) or more inspections reveal evidence of abandonment.

(3) As used in this section:

(A) "Evidence of abandonment" includes, but is not limited to, any of the

following conditions:

(i) Overgrown or dead vegetation;

(ii) Accumulation of newspapers, circulars, flyers, or mail;

(iii) Past due utility notices, disconnected utilities, or utilities not in use;

(iv) Accumulation of trash, refuse, or other debris;

(v) Absence of window coverings such as curtains, blinds, or shutters;

(vi) One (1) or more boarded, missing, or broken windows;

(vii) The property is open to casual entry or trespass;

(viii) The property has a building or structure that is or appears structurally unsound or has any other condition that presents a potential hazard or danger to the safety of persons; or

(ix) Any of the conditions in subdivisions (a)(3)(A)(i) - (viii) exist and, if there is a mortgage on the property, the mortgagor does not occupy the property and has informed the mortgagee or loan servicing company in writing that the mortgagor does not intend to occupy the property in the future;

(B) "Period of delinquency" means, with respect to a parcel, the longest consecutive number of years the property taxes on that parcel are delinquent and have not been paid to a jurisdiction, and for which years the collection of property taxes for that jurisdiction is being sought in the tax sale;

(C) "Person entitled to redeem" means, with respect to a parcel, any interested person, as defined in this chapter, as of the date of the sale or the date the motion to redeem is filed;

(D) "Vacant and abandoned" with respect to real property:

(i) Means:

(a) There is a reasonable basis to believe the property is not occupied as determined in accordance with subdivision (a)(2); or

(b) A court has determined that the property is a risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners, or has otherwise declared the property unfit for occupancy; and

(ii) Does not include:

(a) An unoccupied building that is undergoing construction, renovation, or rehabilitation at the hands of a properly licensed contractor pursuant to a building permit; is proceeding to completion; and is in compliance with all applicable ordinances, codes, regulations, and statutes;

(b) A building occupied on a seasonal basis that is otherwise secure;

(c) A building that is secure, but is the subject of a probate action, action to quiet title, or other similar ownership dispute; provided, that the owners are exercising diligence in pursuit of resolution of the dispute;

(d) A building damaged by a natural disaster and one (1) or more owners intend to repair and reoccupy the property; provided, that the owners are exercising diligence in pursuit of completion of repairs at the property in accordance with subdivision (a)(3)(D)(ii)(*a*); or

(e) Any property occupied by the owner, a relative of the owner, or a tenant lawfully in possession; provided, that neither subdivision (a)(3)(A)(viii) nor subdivision (a)(3)(D)(i)(*b*) applies to the property.

(b)(1) In order to redeem a parcel, the person entitled to redeem shall file a motion to such effect in the proceedings in which the parcel was sold. The motion shall describe the parcel, the date of the sale of the parcel, the date of the entry of the order confirming the sale and shall contain specific allegations establishing the right of the person to redeem the parcel. Prior to the filing of the motion to redeem, the movant shall pay to the clerk of the court an amount equal to the total amount of delinquent taxes, penalty, interest, court costs, and interest on the entire purchase price paid by the purchaser of the parcel. The interest shall be at the rate of twelve percent (12%) per annum, which shall begin to accrue on the date the purchaser pays the purchase price to the clerk and continuing until the motion to redeem is filed. If the entire amount owing is not timely paid to the clerk or if the motion to redeem is not timely filed, the redemption shall fail.

(2) In any motion to enforce a right of redemption brought by a transferee against a tax sale purchaser or other interested party:

(A) The tax sale purchaser or other interested party in whom the right of redemption originally vested must be served with a copy of the motion to redeem;

(B) The motion to redeem must be denied on the objection or response to the motion to redeem by the tax sale purchaser or any other interested party if it appears that the transferee is engaged in speculation or profiteering with respect to such right of redemption;

(C) Such speculation and profiteering is presumed if it appears that the transfer of the right of redemption was made for consideration in an amount less than the purchase price paid by the tax sale purchaser at the tax sale minus the amount the debtor would have been required to pay to redeem the property under this chapter; and

(D) If a motion to redeem by a transferee is denied under this subdivision (b)(2) based on a finding by the court of such speculation and profiteering, the court may award reasonable attorney's fees to the tax sale purchaser or any other interested party challenging the motion to redeem.

(3) Subdivision (b)(2) is intended to:

(A) Further the public policies of this state of protecting the interests of owners of real property subject to debt, protecting the integrity of the tax sale process, providing reliable tax sale titles to purchasers, and prohibiting the profiteering and speculation in rights of redemption; and

(B) Be remedial and construed to apply to any existing rights of redemption.

(c) Upon the filing of the motion to redeem and the payment of the required amount, the clerk shall within ten (10) days send a notice of the filing of the redemption motion to the purchaser and all persons entitled to redeem the parcel. The notice of redemption shall state the amount paid at the time of the filing of the motion and refer the persons to this section.

(d) The purchaser may within thirty (30) days after the mailing of the notice of redemption, file a response seeking additional funds to be paid by the

proposed redeemer to compensate the purchaser for amounts expended by the purchaser for the purposes set out in subsection (e). The response shall specifically set out the basis for each category of additional funds claimed. The response may also allege that the motion to redeem was not properly or timely filed. If no response is timely filed, the court shall determine whether the redemption has been properly made, and if so, shall cause an order to be entered requiring the proposed redeemer to pay additional interest at the rate set forth in subsection (b), accruing from the date the motion to redeem was filed until the date of such payment.

(e) Additional sums to be paid by the proposed redeemer at the demand of the purchaser, shall include the following:

(1) Additional ad valorem taxes, penalty, interest and court costs paid by the purchaser secured by a lien against the parcel, plus interest thereon at the rate set forth in subsection (b), accruing from the date of payment of the additional taxes by the purchaser until the date of payment by the proposed redeemer pursuant to order of the court;

(2) Reasonable payments made by the purchaser for insurance on the parcel and any improvements thereon;

(3) Reasonable cost paid by the purchaser to avoid permissive waste of the parcel;

(4) Reasonable expenses paid by the purchaser as a result of a judicial or administrative order or other official notice requiring the purchaser to immediately bring the property into compliance with applicable building code or zoning regulations;

(5) Reasonable payments by the purchaser for homeowner's association dues or obligations resulting from covenants running with the land which are secured by a lien against the parcel; and

(6) Additional interest at the rate set out in subsection (b), accruing from the date the motion to redeem was filed until the date the purchaser's response was filed. If the court determines that the purchaser has not delayed consideration of the motion to redeem and that any response filed by the purchaser for additional funds was based on a reasonable expectation that the expenditures of the purchaser were reimbursable pursuant to this section, then the court may require the proposed redeemer to also pay additional interest at the same rate, accruing from the date the purchaser's response was filed until the date of such payment.

(f) Any additional funds ordered to be paid by the proposed redeemer under this section shall be paid to the clerk prior to the later of the following dates:

(1) The date of the expiration of the redemption period; or

(2) Thirty (30) days after the entry of the order allowing additional funds.

(g) If the proposed redeemer timely pays the full amount of any additional funds ordered by the court, the court shall declare that the property has been redeemed.

(h) If the proposed redeemer fails to timely pay the full amount of any additional funds ordered by the court, the redemption shall fail and any funds paid by the proposed redeemer shall be refunded to him less the clerk's fee and any other court costs.

(i) In the event a person tenders the full amount owing in the proceeding at a time after the date of sale and prior to the entry of an order confirming the

sale, the person shall also pay interest computed as established by subsection (b) on the total purchase price paid by the purchaser.

(j) The court in which the proceedings are pending may order that any proposed redeemer shall also pay to the clerk the amount necessary to record any orders of the court in the office of the register of deeds. Such payment may be required to be paid upon the filing of the motion to redeem or upon determining whether any additional funds are to be allowed.

(k) Upon any order pertaining to redemption becoming final, the clerk shall make such disbursements as are provided in the order.

(*l*) In the event the court directs the delinquent tax attorney or an attorney ad litem to participate in the redemption portion of the proceedings as an assistance to the court, the court may allow a reasonable attorneys fee to be paid by either the movant or the purchaser as directed by the court.

(m) In the event all parties to the action waive their right to appeal all issues in the cause, the clerk shall immediately disburse all amounts owing.

(n) Upon entry of an order of the court declaring that the redemption is complete, title to the parcel shall be divested out of the purchaser, and the clerk shall promptly refund the purchase money and pay all sums due to the purchaser under this section. The interests of the taxpayer and other interested parties, or their successors in interest, shall be restored to that state which existed as of the date of entry of the order confirming the sale. Any lienholder who redeems the parcel may thereafter proceed to foreclose upon the parcel or otherwise enforce such lien.

(o) During the redemption period, the purchaser shall have no obligation to purchase insurance on the parcel and shall not be liable to a person redeeming the parcel for damages to the parcel during such redemption period unless such damages are directly caused by intentional acts of the purchaser. This subsection (o) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

(p) During the redemption period and thereafter, a taxing entity which has purchased a parcel pursuant to § 67-5-2501 shall have no obligation to preserve the value of the parcel. This subsection (p) is intended to be procedural and remedial in application and is made applicable retroactively to the extent allowed by law.

History.

Acts 2014, ch. 883, § 17; 2015, ch. 414, §§ 18-24; 2015, ch. 486, § 1; 2017, ch. 299, §§ 16-18; 2018, ch. 778, § 1; 2019, ch. 170, § 7.

Amendments.

The 2019 amendment, in (a), substituted the present last sentence for the former introductory clause at the end of (a)(1) which read: "The redemption period of each parcel shall be stated in the order confirming the sale based on the following criteria:", redesignated (a)(1) as (a)(1)(A), and redesignated former (a)(1)(A) - (a)(1)(C) as (a)(1)(B) - (a)(1)(D).

Effective Dates.

Acts 2019, ch. 170, § 10. April 18, 2019.

NOTES TO DECISIONS

Analysis

1. Construction.
3. Law In Effect.
4. Person Entitled to Redeem.

1. Construction.

Interest on the purchase price of the property is not one of the lawful charges within the meaning of former T.C.A. § 67-5-2704, and had the legislature intended the redeeming party to

pay interest while the redemption was proceeding, it could have expressly done so; because the redeeming party must pay its funds within one year, there was no authority for a longer period of interest, and appellant could not be charged interest past the date it filed the required funds. Metro. Gov't of Nashville v. Deliquent Taxpayers As Shown on the 2011 Real Prop. Tax Record, — S.W.3d —, 2018 Tenn. App. LEXIS 417 (Tenn. Ct. App. July 23, 2018).

Sole indication in the record from which a finding on conversion and trespass claims could be inferred was the trial court's determination that the expenditures incurred by appellees in removing debris and items of personalty from the property were reasonable pursuant to T.C.A. § 67-5-270, but the appellate court could not extrapolate from this finding that the trial court resolved the claims of trespass to chattels and conversion of the private property removed. Inasmuch as the appeal was taken from an order that was not final, the appeal was subject to dismissal for lack of subject matter jurisdiction. State ex rel. Claiborne Cty. v. Delinquent Taxpayer, — S.W.3d —, 2018 Tenn. App. LEXIS 423 (Tenn. Ct. App. July 24, 2018).

Trial court properly granted the lienholders' petition for redemption of a parcel of real property purchased at a delinquent taxpayer sale with the condition that they reimburse the purchasers for expenses incurred in cleaning up the property because the expenses were recoverable despite having been incurred prior to the entry of the order confirming the sale, and the purchasers' duty to refrain from committing permissive waste obligated them to take reasonable action in order to prevent additional deterioration to the property. State ex rel. Claiborne Cty. v. Alvarez, 606 S.W.3d 719, 2019 Tenn. App. LEXIS 356 (Tenn. Ct. App. July 22, 2019).

3. Law In Effect.

Law in effect at the time of a tax sale governed the proceedings subsequent to the sale as the right of redemption and the procedure by which it was exercised were created by statute and originated on the date of the tax sale. Delinquent Taxpayers As Shown on the 2011 Real. Prop. Tax Records v. Metro. Gov't, — S.W.3d —, 2018 Tenn. App. LEXIS 418 (Tenn. Ct. App. July 23, 2018).

4. Person Entitled to Redeem.

Because the trust was not a "person entitled to redeem," the property that was subject to the tax sale, not having acquired an interest in the property until after the sale, the trial court erred by entering an order of redemption in favor of the trust. Hamilton Cty. v. Tax Year 2011 Delinquent Taxpayers, 2018 Tenn. App. LEXIS 701 (Tenn. Ct. App. Dec. 3, 2018).

67-5-2702. Motion setting forth claim to excess sale proceeds — Service of motion — Hearing on motion — Recovery of excess proceeds paid in error.

NOTES TO DECISIONS

Analysis

2. Right of Redemption.
3. Interest.

2. Right of Redemption.

Pursuant to former T.C.A. § 67-5-2702 (amended 2014), a transferee was entitled to redeem property sold at a delinquent tax sale where it had purchased that right from the taxpayer and exercised that right within the one-year period of § 67-5-2702. Delinquent Taxpayers As Shown on the 2011 Real. Prop. Tax Records v. Metro. Gov't, — S.W.3d —, 2018 Tenn. App. LEXIS 418 (Tenn. Ct. App. July 23, 2018).

Trial court erred in concluding that the transferee's redemption failed for noncompliance with the 2014 amendments to the redemption process where it was subject to the pre-2014 version of the statute, and nothing in the record indicated that it had not followed that procedure. Delinquent Taxpayers As Shown on the 2011 Real. Prop. Tax Records v. Metro. Gov't, — S.W.3d —, 2018 Tenn. App. LEXIS 418 (Tenn. Ct. App. July 23, 2018).

3. Interest.

Interest on the purchase price of the property is not one of the lawful charges within the meaning of former T.C.A. § 67-5-2704, and had the legislature intended the redeeming party to pay interest while the redemption was proceeding, it could have expressly done so; because the redeeming party must pay its funds within one year, there was no authority for a longer period of interest, and appellant could not be charged interest past the date it filed the required funds. Metro. Gov't of Nashville v. Deliquent Taxpayers As Shown on the 2011 Real Prop. Tax Record, — S.W.3d —, 2018 Tenn. App. LEXIS 417 (Tenn. Ct. App. July 23, 2018).

67-5-2703. Applicability and intent of § 21-1-205.

Section 21-1-205 is not applicable to property tax proceedings, tax liens, or the enforcement of such tax liens. This section is intended to be procedural and remedial in its application and is made applicable retroactively to the extent allowed by law.

History.
Acts 2019, ch. 170, § 8.

Effective Dates.
Acts 2019, ch. 170, § 10. April 18, 2019.

PART 28

WAIVER

67-5-2801. Industrial and commercial personal property taxes, penalties, interest, attorney fees and costs — Waiver of enforcement and collection.

(a) The trustee or collector may request the delinquent tax attorney to seek court approval in order to waive the enforcement and collection of all, but not a portion of, industrial and commercial personal property taxes, penalties, interest, attorney fees and costs. All of the following must be determined and attested to by the trustee or collector before a court may approve a waiver:

(1) The taxpayer has ceased all business operations;

(2) No personal property subject to the tax can be found; and

(3) Neither fraud nor an intention to avoid payment of the taxes on the part of the taxpayer caused the circumstances giving rise to such waiver.

(b) In order to waive the enforcement and collection of taxes, including penalties, interest, or attorney fees and costs, imposed on public utility personal property or personal property of modern market telecommunications providers, the trustee or collector must first confirm with the comptroller of the treasury that such taxpayer's local assessment only includes personal property and does not include any real property. If such taxpayer is still operating, then no waiver may be requested or approved even if the local assessment only includes personal property and no personal property can be found in the trustee's or the collector's jurisdiction. If such taxpayer has ceased all operations and the local assessment does not include any real property, then the trustee or the collector may request a waiver in accordance with subdivisions (a)(1)-(3).

(c) The trustee or collector is required to submit a report to the chief executive officer of the local government and the county assessor of all waivers approved by the court when no delinquent tax lawsuit has been filed. The report shall contain the taxpayer's name and amount of taxes, penalties, interest, attorney fees, and costs waived. The waivers approved by the court under this subsection (c) are to be included and written as a credit in the monthly settlement and annual statement in accordance with § 67-5-1903.

(d) With respect to delinquent personal property taxes being waived under this section, for which the delinquent lawsuit has been filed, the court having jurisdiction of the delinquent tax lawsuit may, upon motion by the delinquent tax attorney and a finding that the factors outlined in subdivisions (a)(1)-(3) or

subsection (b) exist, order the waiver of enforcement and collection of all, but not a portion of, such personal property taxes, penalties, interest, attorney fees and costs.

History.
Acts 1999, ch. 163, § 1; 2013, ch. 353, § 18; 2017, ch. 490, § 11; 2019, ch. 220, § 2.

Amendments.
The 2019 amendment substituted "§ 67-5-1903" for "§§ 67-5-1903 and 67-5-1904" in (c).

Effective Dates.
Acts 2019, ch. 220, § 8. July 1, 2019.

CHAPTER 6

SALES AND USE TAXES

Part 1. General Provisions

Section
67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective until October 1, 2021. See the version effective on October 1, 2021.]
67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective on October 1, 2021. See the version effective until October 1, 2021.]
67-6-103. Deposit and allocation of receipts — Transportation equity trust fund — Other special allocations.
67-6-104. Apportionment of sales and use tax revenue to commercial development districts in rural, economically distressed counties.
67-6-105. Event Tourism Act. [Effective until July 1, 2023.]
67-6-106. Sales and use taxes collected on electronic nicotine delivery devices.

Part 2. Taxes Imposed

67-6-201. Taxable privilege declared.
67-6-202. Property sold at retail. [Effective until October 1, 2021. See the version effective on October 1, 2021.]
67-6-202. Property sold at retail. [Effective on October 1, 2021. See the version effective until October 1, 2021.]
67-6-203. Property used, consumed, distributed or stored.
67-6-205. Services.
67-6-206. Industrial machinery and raw materials — Exemptions.
67-6-207. Farm equipment and machinery.
67-6-209. Use of property produced or severed from earth — Exemptions.
67-6-217. Aviation fuel — Tax imposed — Reimbursement of transportation equity trust fund for decreased aviation fuel tax revenue — Report.
67-6-219. Sales of tangible personal property to common carriers for use outside state.
67-6-221. Tax imposed on interstate or international telecommunications services sold to businesses — Privilege tax imposed on modern market telecommunications providers — Penalty.
67-6-224. Qualified headquarters facility.
67-6-226. Sales tax on cable and wireless cable television services.
67-6-227. Sales tax on satellite television services.

Part 3. Exemptions

67-6-313. Interstate commerce — Repair services — Tax credit.
67-6-317. Public safety or public works-related goods sold to nonprofit property owners association.
67-6-318. Qualified building materials used in construction, expansion, or renovation of one or more qualified, new, or expanded warehouse or distribution facilities.
67-6-322. Religious, educational, and charitable institutions — Energy resource recovery facilities.
67-6-323. Tangible personal property, computer software, or services that are necessary to and primarily used for qualified production.

67-6-329. Miscellaneous exemptions. [Effective until October 1, 2021. See version effective on October 1, 2021.]
67-6-329. Miscellaneous exemptions. [Effective on October 1, 2021. See version effective until October 1, 2021.]
67-6-330. Amusement tax exemptions.
67-6-349. Petroleum products sold to air common carriers for flights outside United States.
67-6-385, 67-6-386. [Repealed.]
67-6-393. Exemption for sales tax holiday.

Part 4. Administrative Provisions

67-6-407. Dealers of aviation fuel — Reports.
67-6-408. Transportation equity trust fund — Commissioners' annual report.
67-6-410. Information report of sales of beer, tobacco products, or other types of tangible personal property.

Part 5. Collection and Enforcement Generally

67-6-501. Tax collected from dealer — Property management company tax on vacation lodging — Mobile telecommunications service tax — Liability of marketplace facilitator.
67-6-504. Returns and payment. [Effective until October 1, 2021. See version effective on October 1, 2021.]
67-6-504. Returns and payment. [Effective on October 1, 2021. See version effective until October 1, 2021.]
67-6-505. Alternative filing and payments.
67-6-509. Deduction for dealer's accounting costs.
67-6-515. Collection of taxes by marketplace facilitator — Reports — Audit — Relief from liability.
67-6-524. Registration of dealers.
67-6-525. Findings related to sales threshold standard.
67-6-526. Effect on substantial nexus criteria.
67-6-527. [Reserved.]
67-6-528. Common carriers seeking reduced rate — Applications — Certificates.
67-6-536. Returns submitted by Model 1 and 2 sellers — Informational return — Electronic payments — Due dates.
67-6-539. Bundled transactions — Telecommunications services.

Part 6. Dealer Registration

67-6-601. Certificate of registration — Required — Application. [Effective until October 1, 2021. See version effective on October 1, 2021.]
67-6-601. Certificate of registration — Required — Application. [Effective on October 1, 2021. See version effective until October 1, 2021.]

Part 7. 1963 Local Option Revenue Act

67-6-702. Tax authorized — Rates — Termination of services tax.
67-6-704. Exemptions.
67-6-706. Referendum.
67-6-710. Collection and administration.
67-6-712. Distribution of revenue.
67-6-714. Local option tax exemption for cable or wireless cable television services.
67-6-715, 67-6-716. [Repealed.]

Part 9. Transactions Subject to Sales and Use Taxes

67-6-901. [Repealed.]
67-6-902. [Repealed.]
67-6-903. [Reserved.]
67-6-904. [Repealed.]
67-6-905. Source of sales of telecommunication services — Definitions.
67-6-906. [Repealed.]
67-6-907. [Repealed.]

PART 1

GENERAL PROVISIONS

67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective until October 1, 2021. See the version effective on October 1, 2021.]

As used in this chapter, unless the context otherwise requires:

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

(i) Advice and counseling regarding marketing and advertising;

(ii) Strategic planning for marketing and advertising;

(iii) Consumer research;

(iv) Account planning;

(v) Public relations;

(vi) Design;

(vii) Layout;

(viii) Preparation of preliminary art;

(ix) Creative consultation, coordination, media placement, direction and supervision;

(x) Script and copywriting;

(xi) Editing;

(xii) Supervision of the production of advertising materials, including quality control;

(xiii) Direct mail; and

(xiv) Account management services;

(B) "Advertising services" does not include the production of final artwork or advertising materials;

(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;

(5) "Aircraft" has the same meaning used in § 42-1-101;

(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;

(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this subdivision (7):

(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;

(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transac-

tions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county, or metropolitan library system, "business" does not include sales, including online sales, that the charitable entity elects to make in lieu of two (2) semiannual temporary sales periods; provided, that the sales do not exceed three hundred thousand dollars ($300,000) per calendar year; and provided further, that the election by the charitable entity must remain in effect for no less than four (4) years. For a community foundation described in 26 U.S.C. § 170(c)(2), "business" does not include sales that the community foundation elects to make in lieu of two (2) semiannual temporary sales periods; provided, that in any calendar year, the sales shall take place during no more than two (2) auctions, which last no more than twenty-four (24) hours, in each county designated to receive charitable support from a fund or trust that comprises a component part of the community foundation, as described in 26 CFR § 1.170A-9(f)(11)(ii);

(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128 [repealed], is not included in "business." "Business" shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;

(9) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(10) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(11) "Certified service provider" means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(12) "Clothing" means all human wearing apparel suitable for general use;

(13) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(14) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(15) "Commissioner" means and includes the commissioner of revenue or the commissioner's duly authorized assistants;

(16) "Common carrier" means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;

(17) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(18) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(19) "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or maintenance of computer software on the part of the seller;

(20) "Construction machinery" means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of permanent improvements to real estate;

(21) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(22) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(23) "Dealer" means every person, as used in this chapter, including

Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;

(L) Sells at retail or charges admission, dues or fees as defined in this chapter;

(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations

in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators; or

(N) Acts as a marketplace facilitator;

(24) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(25)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

(26) "Delivery network company" means a business entity that maintains an internet website or mobile application used to facilitate delivery services for the sale of local products;

(27) "Delivery services" means the pickup of one (1) or more local products from a local merchant and delivery of the local products to a customer. "Delivery services" do not include any delivery requiring over fifty (50) miles of travel from the local merchant to the customer;

(28) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (28)(A)(i)-(v);

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;

(29) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electroni-

cally, including prerecorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (29), "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" does not include audio greeting cards sent by electronic mail;

(30) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

(31) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction and nonfiction and short stories. "Digital books" does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(32) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(33) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(34) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

(35) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(36)(A) "Durable medical equipment" means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) "Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that the repair and replace-

ment parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include mobility enhancing equipment;

(37) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(38) "Energy resource recovery facility" means a facility for the production of energy in the form of steam or chilled water from the controlled burning of combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;

(39) "Fabricating or processing tangible personal property for resale" means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. "Fabricating or processing tangible personal property for resale" shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). "Fabricating or processing tangible personal property for resale" shall not include any other type of repair services. "Fabricating or processing tangible personal property for resale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(40) "Final artwork" means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(41) "Flea market" means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market" does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;

(42) "Flea market operator" means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market operator" does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a

not-for-profit corporation;

(43) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food;

(44) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;

(45) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(46) "Industrial machinery" means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the principal business of the sale of building supplies either within or without this state, or such use by a county, municipality, or water and wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 6, or a contractor pursuant to a contract with the county, municipality, or water and wastewater treatment authority for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

(a) The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;

(b) The removal, handling and replacement of overburden and spoils materials; or

(c) The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;

(ii) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose

of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (46)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (46)(B), "remanufacturing" means making new or different products with new or different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(b) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent;

(ii) To "package," as used in subdivision (46)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (46)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years. "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility, that meets the requirements set out in this subdivision (46)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under chapter 185 of the Public Acts of 1995, or are configuring, testing or packaging computer products. "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:

(a) A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;

(b) An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (46)(H)(i), through an additional investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;

(c) A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars ($10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building, over a period not exceeding three (3) years; or

(d) An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars ($20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars ($10,000,000) in the renovation or expansion of an existing building and/or the purchase of

new equipment for such a building, together with an investment in excess of ten million dollars ($10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;

(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (46)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due;

(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and conditions of subdivision (46)(H), except:

(i) The required investment in excess of ten million dollars ($10,000,000) may also be made in a previously occupied facility:

(a) Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or

(b) Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (46)(I)(i)(*a*), made no later than one (1) year after the date of the lease agreement; and

(ii) Any purchases exempted from tax for use in the facility described in this subdivision (46)(I) must be made no later than one (1) year after the purchase of the building under subdivision (46)(I)(i)(*a*), or no later than one (1) year after the date of the lease agreement under subdivision (46)(I)(i)(*b*);

(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale;

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (46)(K), "industrial machinery" includes repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center;

(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property

into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion;

(M) "Industrial machinery" also includes machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts, and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the purpose of research and development;

(47) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;

(48) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;

(49) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;

(50) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(51) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A "lease or rental" may include future options to purchase or extend;

(A) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments;

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (51), an operator must do more than maintain, inspect, or set-up the tangible personal property; or

(iv) Providing a dumpster or other container for waste or debris removal for a fixed or indeterminate period of time along with the delivery and pickup of the dumpster. A condition of this exclusion is that the provider of the dumpster is exclusively responsible for delivery and pickup of the dumpster;

(B) "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (51) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code (26 U.S.C.), or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (51) shall be applied only prospectively from the date of adoption [January 1, 2008] and shall have no retroactive impact on existing leases or rentals;

(52) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(53) "Local merchant" means a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with the delivery network company;

(54) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(55) "Marketplace" means a physical or electronic place, platform, or forum, including, but not limited to, a store, booth, internet website, catalog, or dedicated sales software application, where tangible personal property or any of the things or services taxable under this chapter are offered for sale;

(56) "Marketplace facilitator":

(A) Means a person, including any affiliate of the person, that:

(i) For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's tangible personal property or things or services taxable under this chapter through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and

(ii) Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser of the marketplace seller's tangible personal property or things or services taxable under this chapter and transmits payment to the marketplace seller;

(B) Does not include:

(i) A person who exclusively provides advertising services, including listing products for sale, so long as the person does not also engage directly or indirectly through one (1) or more affiliated persons in those activities described in subdivision (56)(A) that are unrelated to adver-

tising services;

(ii) A person whose activity with respect to marketplace sales is limited to providing payment processing services between two (2) or more parties;

(iii) A derivatives clearing organization, designated contract market, or foreign board of trade or swap execution facility that is registered with the Commodity Futures Trading Commission ("CFTC registered platforms"), or any clearing members, futures commission merchants, or brokers using the services of CFTC registered platforms; or

(iv) A person that is a delivery network company; except, that a delivery network company that meets the definition set forth in subdivision (56)(A) may elect, in a reasonable manner and duration prescribed by the department, to be deemed a marketplace facilitator pursuant to this chapter; and

(C) Includes a peer-to-peer car sharing program as defined in § 67-4-1901;

(57) "Marketplace seller" means a person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator;

(58) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252 (4 U.S.C. § 124(7));

(59) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include durable medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(60) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(61) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(62) "Model 3 seller" means a seller that has sales in at least five (5) states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars ($500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (62), a seller includes an affiliated group of sellers using the same proprietary system;

(63) "OEM headquarters company" means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (63), "affiliate" has the same meaning as

provided in § 67-4-2004;

(64) "OEM headquarters company vehicle" means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner;

(65)(A) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter-drug" label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredients contained in the compound, substance or preparation;

(B) "Over-the-counter-drug" does not include grooming and hygiene products;

(66) "Permanent location" does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(67) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial concern, or other group or combination acting as a unit, in the plural as well as the singular number. "Person" further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(68) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;

(69) "Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards or similar materials;

(70) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(71) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other

nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(72)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;

(B) "Prepared food" in subdivision (72)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses;

(73) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;

(74) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten portions of computer software does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(75) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(76)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement,

corrective, or supportive device worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

(i) Corrective eyeglasses; or

(ii) Contact lenses;

(77) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;

(78) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

(79) "Qualified data center" means a data center that has made a required capital investment in excess of one hundred million dollars ($100,000,000) during an investment period not to exceed three (3) years and that creates at least fifteen (15) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (79), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (79), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (79) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (79), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

(80) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock;

(81)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner;

(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but

is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

(a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;

(b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;

(c) Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and

(d) Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property;

(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling, leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;

(iii) Nothing in this subdivision (81) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392;

(82) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(83) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter and every marketplace facilitator;

(84)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;

(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;

(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;

(F) "Sale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (84), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;

(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments;

(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or loading of computer software into a computer; and

(L) "Sale" includes any sale, as otherwise defined in this subdivision

(84), made or facilitated by a marketplace facilitator;

(85)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;

(86) "School art supplies" means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of "school art supplies":

(A) Clay and glazes;

(B) Paintbrushes for artwork;

(C) Paints, acrylic, tempera, and oil;

(D) Sketch and drawing pads; and

(E) Watercolors;

(87) "School computer supplies" means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of "school computer supplies":

(A) Computer printers;

(B) Computer storage media, diskettes, compact disks;

(C) Handheld electronic schedulers, except devices that are cellular phones;

(D) Personal digital assistants, except devices that are cellular phones; and

(E) Printer supplies for computers, printer paper, printer ink;

(88) "School instructional materials" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of "school instructional materials":

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks;

(89) "School supplies" means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of "school supplies":

(A) Binders;

(B) Blackboard chalk;

(C) Book bags;

(D) Calculators;

(E) Cellophane tape;

(F) Compasses;

(G) Composition books;

(H) Crayons;

(I) Erasers;

(J) Folders, expandable, pocket, plastic and manila;

(K) Glue, paste, and paste sticks;

(L) Highlighters;
(M) Index cards;
(N) Index card boxes;
(O) Legal pads;
(P) Lunch boxes;
(Q) Markers;
(R) Notebooks;
(S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;
(T) Pencil boxes and other school supply boxes;
(U) Pencil sharpeners;
(V) Pencils;
(W) Pens;
(X) Protractors;
(Y) Rulers;
(Z) Scissors; and
(AA) Writing tablets;

(90) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service address means the location of the customer's place of primary use;

(91) "Software" means computer software;

(92) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (92), "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

(93) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(94) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(95)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(C) "Tangible personal property" does not include fiber-optic cable after it has become attached to a utility pole, building, or other structure or installed underground. Such fiber-optic cable is deemed realty for purposes of this chapter upon installation;

(D) "Tangible personal property" does not include mains, pipes, pipelines, or tanks after it has become attached to a building, or other structure, or installed underground for conducting steam, heat, water, wastewater, oil, electricity, gas, or any property, substance, or product capable of transportation or conveyance therein or that is protected thereby, excluding propane tanks for residential use and above-ground storage tanks that can be moved without disassembly and are not affixed to the land. Such mains, pipes, pipelines, and tanks are deemed realty for purposes of this chapter upon installation;

(E) "Tangible personal property" does not include surface, underground, or elevated railroads, or railroad structures, substructures, and superstructures, tracks and the metal thereon, branches, switches, and other improvements or structures permitted or authorized to be made in, upon, or under public or private property. Such railroads, railroad structures, substructures, superstructures, tracks and the metal thereon, branches, switches, and other improvements made in, upon, or under public or private property are deemed realty for purposes of this chapter upon installation;

(96)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added;

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service (47 U.S.C. § 522(6)), and audio and video programming services delivered by commercial

mobile radio service providers, as defined in 47 CFR 20.3;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

(97) "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;

(98) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;

(99) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

(100)(A) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business;

(B) "Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in interstate commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and

(C) "Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;

(101) "Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;

(102) "Video game digital product" means the right to access and use computer software that facilitates human interaction with a user interface to generate visual feedback for amusement purposes, when possession of the computer software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis;

(103)(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology;

(B) "Video programming services" does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(104) "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

History.

Acts 1947, ch. 3, §§ 2, 4; C. Supp. 1950, §§ 1248.51, 1248.53 (Williams, §§ 1328.23, 1328.25); Acts 1951, ch. 3, § 1; modified; 1955, ch. 51, §§ 1-5, 10; 1955, ch. 242, §§ 1, 8; impl. am. Acts 1959, ch. 9, § 14; Acts 1959, ch. 15, § 1; 1963, ch. 38, §§ 1, 2, 7; 1963, ch. 172, §§ 1, 2; 1965, ch. 3, § 1; 1965, ch. 335, § 1; 1968, ch. 556, § 1; 1968, ch. 601, § 1; 1969, ch. 95, § 1; 1970, ch. 390, § 1; 1971, ch. 117, § 1; 1971, ch. 149, § 1; 1971, ch. 151, § 1; 1972, ch. 528, § 1; 1972, ch. 709, § 1; 1972, ch. 731, § 1; 1972, ch. 757, § 1; 1972, ch. 769, § 1; 1973, ch. 179, § 1; 1974, ch. 778, § 1; 1976, ch. 442, § 1; 1977, ch. 42, § 1; 1977, ch. 250, § 1; 1978, ch. 565, §§ 1, 2; 1978, ch. 789, §§ 1, 2; 1978, ch. 921, § 1; 1979, ch. 352, § 1; 1980, ch. 602, § 1; 1981, ch. 229, § 1; T.C.A. (orig. ed.), §§ 67-3002, 67-3017; Acts 1984 (Ex. Sess.), ch. 13, §§ 2, 3, 5; 1984, ch. 523, § 1; 1984, ch. 762, §§ 1-3; 1984, ch. 959, § 1; 1984, ch. 987, § 1; 1985, ch. 25, § 3; 1985, ch. 332, §§ 1, 2; 1985, ch. 389, § 2; 1985, ch. 406, §§ 1, 3, 4, 6, 7; 1985, ch. 416, § 1; 1985, ch. 456, § 1; 1985, ch. 469, §§ 1, 2; 1986, ch. 567, § 1; 1986, ch. 815, § 1; 1986, ch. 924, § 1; 1987, ch. 185, § 1; 1987, ch. 295, § 1; 1987, ch. 428, § 3; 1988, ch. 572, § 1; 1988, ch. 789, § 1; 1989, ch. 312, § 5; 1991, ch. 29, § 1; 1991, ch. 41, § 2; 1991, ch. 80, § 1; 1991, ch. 503, § 3; 1992, ch. 917, § 1; 1992, ch. 1007, §§ 1, 2; 1993, ch. 51, §§ 1-3; 1993, ch. 68, §§ 1, 2; 1993, ch. 409, §§ 1, 2; 1994, ch. 552, § 2; 1994, ch. 852, § 1; 1995, ch. 168, §§ 1, 2; 1995, ch. 185, § 1; 1995, ch. 384, § 1; 1995, ch. 544, §§ 3, 4; 1996, ch. 721, §§ 1, 2; 1996, ch. 729, § 1; 1996, ch. 739, § 1; 1996, ch. 770, § 1; 1996, ch. 922, § 1; 1997, ch. 385, § 1; 1997, ch. 451, §§ 1, 2; 1998, ch. 732, § 1; 1998, ch. 976, § 1; 1998, ch. 1038, § 1; 1998, ch. 1057, §§ 1, 2; 1999, ch. 413, §§ 1, 3; 1999, ch. 423, § 4; 1999, ch. 484, §§ 1-3; 2002, ch. 708, § 1; 2002, ch. 719, §§ 1-4; 2002, ch. 856, § 5b; 2003, ch. 9, § 1; 2003, ch. 357, §§ 3-16; 2004, ch. 782, §§ 1-6, 15; 2004, ch. 924, § 17; 2004, ch. 959, §§ 1-4, 59, 60, 68; 2005, ch. 311, §§ 1, 2; 2005, ch. 398, § 2; 2005, ch. 499, §§ 7, 19, 20, 48-50, 52-55, 60, 68; 2006, ch. 975, § 1; 2006, ch. 1019, §§ 33, 34, 44; 2007, ch. 602, §§ 35, 36, 41, 42, 51, 53, 57-68; 2008, ch. 1106, §§ 9, 11, 18, 22, 25, 26; 2009, ch. 530, §§ 8, 18, 24, 35, 50, 53, 56, 114; 2010, ch. 1134, §§ 1, 33; 2011, ch. 508, §§ 30, 32; 2012, ch. 842, § 8; 2014, ch. 994, § 1; 2015, ch. 52, § 1; 2015, ch. 81, § 1; 2015, ch. 249, § 1; 2015, ch. 420, § 1; 2015, ch. 504, § 17; 2015, ch. 514, § 21; 2016, ch. 1001, § 1; 2019, ch. 392, § 1; 2019, ch. 483, § 1; 2019, ch. 501, § 1; 2020, ch. 646, §§ 1-6; 2020, ch. 796, § 4; 2021, ch. 86, § 1.

Compiler's Notes.

For Preamble to the act concerning intent of the general assembly regarding exemptions from sales and use taxes for certain charges related to fiber-optic cable, see Acts 2019, ch. 501.

Acts 2019, ch. 483, § 2 provided the act shall not be given retroactive application, and shall only apply prospectively to tax liabilities incurred on or after July 1, 2019.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 133, 134; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment by ch. 392, in the fourth sentence of (B) in the definition of "business", inserted "including online sales" following "does not include sales," "300,00" for "100,000" preceding "per calendar year," and substituted "must remain in effect" for "shall remain in effect".

The 2019 amendment by ch. 483 added (A)(iv) in the definition of "lease or rental property".

The 2019 amendment by ch. 501 added (C) in the definition of "tangible personal property".

The 2020 amendment by ch. 646 added (N) in the definition of "dealer"; added "and every marketplace facilitator" in the definition of "re-

tailer"; added (L) in the definition of "sale"; and added the definitions of "delivery network company", "delivery services", "local merchant", "marketplace", "marketplace facilitator" and "marketplace seller".

The 2020 amendment by ch. 796 added (C) in the definition of "marketplace facilitator".

The 2021 amendment by ch. 86, effective July 1, 2021, added (D)and (E) in the definition for "Tangible personal property".

Effective Dates.

Acts 2019, ch. 392, § 2. May 10, 2019.
Acts 2019, ch. 483, § 3. July 1, 2019.
Acts 2019, ch. 501, § 3. July 1, 2019.
Acts 2020, ch. 646, § 11. October 1, 2020.
Acts 2020, ch. 796, § 8. October 1, 2020 at 12:01 a.m.
Acts 2021, ch. 86, § 2. July 1, 2021.

Attorney General Opinions.

An online marketplace facilitator, who engages in the regular, systematic solicitation of a consumer market in Tennessee, is a dealer if it consummates the sales transactions with those consumers. The Department of Revenue is empowered to promulgate rules requiring online marketplace facilitators to collect and remit sales tax on behalf of out-of-state dealers, provided the facilitators themselves are not out-of-state dealers. OAG 19-03, 2019 Tenn. AG LEXIS 3 (3/12/2019).

67-6-102. Chapter definitions — Definitions applicable for taxation of charges for mobile telecommunications services. [Effective on October 1, 2021. See the version effective until October 1, 2021.]

As used in this chapter, unless the context otherwise requires:

(1) "Advertising agency" means a business, more than eighty percent (80%) of whose gross receipts in the previous taxable year were, or in the first taxable year are reasonably projected to be, from charges for advertising services. For purposes of this definition, "gross receipts" does not include charges for printing, imprinting, reproduction, publishing of tangible personal property or photography to the extent that:

(A) The activity was not performed by the business itself but was contracted out to another business; and

(B) The charges for the activity were passed through the business to its client;

(2) "Advertising materials" means tangible personal property or its digital equivalent produced to advertise a product, service, idea, concept, issue, place or thing, including, but not limited to, brochures, catalogs and point-of-purchase materials, but not including preliminary artwork, and not including original sound recordings or video recordings produced by recording studios, television studios, video production studios or by or for advertising agencies, or masters produced from the original recordings, regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(3)(A) "Advertising services" means services rendered by an advertising agency to promote a product, service, idea, concept, issue, place or thing, including services rendered to design and produce advertising materials prior to the acceptance of the advertising materials for reproduction or publication, including, but not limited to:

(i) Advice and counseling regarding marketing and advertising;
(ii) Strategic planning for marketing and advertising;
(iii) Consumer research;
(iv) Account planning;
(v) Public relations;
(vi) Design;

(vii) Layout;

(viii) Preparation of preliminary art;

(ix) Creative consultation, coordination, media placement, direction and supervision;

(x) Script and copywriting;

(xi) Editing;

(xii) Supervision of the production of advertising materials, including quality control;

(xiii) Direct mail; and

(xiv) Account management services;

(B) "Advertising services" does not include the production of final artwork or advertising materials;

(4) "Agricultural purposes" means operating tractors or other farm equipment used exclusively, whether for hire or not, in plowing, planting, harvesting, raising or processing of farm products at a farm, nursery or greenhouse, operating farm irrigation systems, or operating motor vehicles or other logging equipment used exclusively, whether for hire or not, in cutting and harvesting trees, when the vehicles or equipment are not operated upon the public highways of this state;

(5) "Aircraft" has the same meaning used in § 42-1-101;

(6) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume;

(7) "Ancillary services" means services that are associated with, or incidental to, the provision of telecommunications services, including, but not limited to, detailed telecommunications billing service, directory assistance service, vertical service, and voice mail service. As used in this subdivision (7):

(A) "Conference bridging service" means an ancillary service that links two (2) or more participants of an audio or video conference call, and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(B) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(C) "Directory assistance" means an ancillary service of providing telephone number information, and address information;

(D) "Vertical service" means an ancillary service that is offered in connection with one (1) or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(E) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service;

(8)(A) "Business" means any activity engaged in by any person, or caused to be engaged in by such person, with the object of gain, benefit, or advantage, either direct or indirect;

(B) "Business" does not include occasional and isolated sales or transactions by a person not regularly engaged in business, or the occasional and isolated sale at retail or use of services sold by or purchased from a person not regularly engaged in business as a vendor of taxable services, or from one who is such a vendor but is not normally a vendor with respect to the services sold or purchased in such occasional or isolated transaction. "Business" does not include those occasional or isolated sales or transactions by such a person involving mobile homes or house trailers, as defined by § 55-4-111, when the consummation of such exclusively involves the assumption by the purchaser of a previously existing finance contract and no other consideration is received by the seller. "Business" does not include any sales or use tax of tangible personal property of any type sold directly to consumers by any person, including, but not limited to, the Girl Scouts or county fairs; provided, however, that the tangible personal property is not regularly sold by the person or is regularly sold by the person only during a temporary sales period that occurs on a semiannual, or less frequent, basis, or, if sold by a volunteer fire department, only during a temporary sales period that occurs no more than four (4) times per calendar year. For charitable entities whose primary purpose is fundraising in support of a city, county, or metropolitan library system, "business" does not include sales, including online sales, that the charitable entity elects to make in lieu of two (2) semiannual temporary sales periods; provided, that the sales do not exceed three hundred thousand dollars ($300,000) per calendar year; and provided further, that the election by the charitable entity must remain in effect for no less than four (4) years. For a community foundation described in 26 U.S.C. § 170(c)(2), "business" does not include sales that the community foundation elects to make in lieu of two (2) semiannual temporary sales periods; provided, that in any calendar year, the sales shall take place during no more than two (2) auctions, which last no more than twenty-four (24) hours, in each county designated to receive charitable support from a fund or trust that comprises a component part of the community foundation, as described in 26 CFR § 1.170A-9(f)(11)(ii);

(C) "Business" includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between corporations and their members or stockholders and also includes such transactions caused by the merger, consolidation, or reorganization of corporations. "Business" also includes occasional and isolated sales or transactions of aircraft, vessels, or motor vehicles between partnerships and the partners thereof and transfers between separate partnerships. Transfers caused by the dissolution of a partnership due solely to a partner, in a partnership composed of three (3) or more persons, voluntarily ceasing to be associated in the carrying on of business of the partnership, as provided in § 61-1-128 [repealed], is not included in "business." "Business" shall be construed to include occasional and isolated sales or transactions by such a person involving aircraft, vessels or motor vehicles, which terms include trailers and special motor

equipment sold in conjunction therewith, as defined by and required to be registered under the laws of Tennessee with an agency of this state or under the laws of the United States with an agency of the federal government, unless such sales or transactions are otherwise exempt under this chapter or are sales between persons who are married, lineal relatives or spouses of lineal relatives, or siblings. Such sales or transactions involving aircraft based in this state shall be presumed to be made and taxable in this state; and any registration reflecting such aircraft that are so based shall constitute evidence thereof;

(9) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(10) "Certified automated system" means software certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

(11) "Certified service provider" means an agent certified under the Streamlined Sales and Use Tax Agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(12) "Clothing" means all human wearing apparel suitable for general use;

(13) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing;

(14) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(15) "Commissioner" means and includes the commissioner of revenue or the commissioner's duly authorized assistants;

(16) "Common carrier" means every person holding a certificate of public convenience and necessity as a common carrier from the interstate commerce commission or the United States department of transportation or its predecessor agency of the federal government;

(17) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions;

(18) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task;

(19) "Computer software maintenance contract" means a contract that obligates a person to provide a customer with future updates or upgrades to computer software, support services with respect to computer software, or both. However, "computer software maintenance contract" does not include telephone or other support services that are optional and are sold separately and invoiced separately and do not include any transfer, repair or maintenance of computer software on the part of the seller;

(20) "Construction machinery" means machinery designed for and used exclusively in the preparation for, assembly, fabrication, and finishing of permanent improvements to real estate;

(21) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever;

(22) "Data center" means a building or buildings, either newly constructed, expanded, or remodeled, housing high-tech computer systems and related equipment;

(23) "Dealer" means every person, as used in this chapter, including Model 1, Model 2, and Model 3 sellers, where the context requires, who:

(A) Manufactures or produces tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(B) Imports, or causes to be imported, tangible personal property from any state or foreign country, for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state;

(C) Sells at retail, or who offers for sale at retail, or who has in such person's possession for sale at retail, or for use, consumption, distribution, or storage to be used or consumed in this state, tangible personal property as defined in this section;

(D) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of the tangible personal property;

(E) Leases or rents tangible personal property, as defined in this chapter, for a consideration, permitting the use or possession of the property without transferring title to such property;

(F) Is the lessee or renter of tangible personal property, as defined in this chapter, and who pays to the owner of such property a consideration for the use or possession of such property without acquiring title to such property;

(G) Maintains or has within this state, directly or by a subsidiary, an office, distributing house, sales room or house, warehouse, or other place of business;

(H) Furnishes any of the things or services taxable under this chapter;

(I) Has any representative, agent, salesperson, canvasser or solicitor operating in this state, or any person who serves in such capacity, for the purpose of making sales or the taking of orders for sales, regardless of whether such representative, agent, salesperson, canvasser or solicitor is located here permanently or temporarily, and regardless of whether an established place of business is maintained in this state;

(J) Engages in the regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers, or other advertising, or by means of print, radio or television media, by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system;

(K) Uses tangible personal property, whether the title to such property is in such person or some other entity, and whether or not such other entity is required to pay a sales or use tax, in the performance of such person's

contract or to fulfill such person's contract obligations, unless such property has previously been subjected to a sales or use tax, and the tax due thereon has been paid;

(L) Sells at retail or charges admission, dues or fees as defined in this chapter;

(M) Rents or provides space to a dealer without a permanent location in this state or to dealers who are registered for sales tax at other locations in this state, but who are making sales at this location on a less than permanent basis; provided, that "dealer" does not include flea market operators; or

(N) Acts as a marketplace facilitator;

(24) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media;

(25)(A) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include delivery for direct mail when the charges are separately stated on an invoice or similar billing document given to the purchaser. If the shipment includes exempt property and taxable property, the seller should allocate the delivery charge by using:

(i) A percentage based on the total sales price of the taxable property compared to the sales prices of all property in the shipment; or

(ii) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment;

(B) The seller shall tax the percentage of the delivery charge allocated to the taxable property but does not have to tax the percentage allocated to the exempt property;

(26) "Delivery network company" means a business entity that maintains an internet website or mobile application used to facilitate delivery services for the sale of local products;

(27) "Delivery services" means the pickup of one (1) or more local products from a local merchant and delivery of the local products to a customer. "Delivery services" do not include any delivery requiring over fifty (50) miles of travel from the local merchant to the customer;

(28) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one (1) or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in subdivisions (28)(A)(i)-(v);

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not

represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to 21 CFR 101.36;

(29) "Digital audio works" means works that result from the fixation of a series of musical, spoken, or other sounds, that are transferred electronically, including prerecorded or live songs, music, readings of books or other written materials, speeches, ringtones, or other sound recording. For purposes of this subdivision (29), "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication. "Digital audio works" does not include audio greeting cards sent by electronic mail;

(30) "Digital audio-visual works" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, that are transferred electronically. "Digital audio-visual works" includes motion pictures, musical videos, news and entertainment programs, and live events. "Digital audio-visual works" does not include video greeting cards sent by electronic mail or video or electronic games;

(31) "Digital books" means works that are generally recognized in the ordinary and usual sense as "books" that are transferred electronically, including works of fiction and nonfiction and short stories. "Digital books" does not include newspapers, magazines, periodicals, chat room discussions or weblogs;

(32) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(33) "Direct pay permit" means special written permission granted to a taxpayer by the commissioner to make all purchases free of the sales or use tax and report all sales or use tax due directly to the department;

(34) "Direct pay permit holder" means a taxpayer who holds a direct pay permit;

(35) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body;

(36)(A) "Durable medical equipment" means equipment that:

(i) Can withstand repeated use;

(ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Is not worn in or on the body;

(B) "Durable medical equipment" includes repair and replacement parts for the equipment; provided, however, that the repair and replacement parts shall not include parts, components, or attachments that are for single patient use. "Durable medical equipment" does not include mobility enhancing equipment;

(37) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(38) "Energy resource recovery facility" means a facility for the production of energy in the form of steam or chilled water from the controlled burning of combustible materials, including, but not limited to, coal, fuel oil, or natural gas, where such energy is to be used in a system for heating and cooling five (5) or more separate buildings;

(39) "Fabricating or processing tangible personal property for resale" means only tangible personal property that is fabricated or processed for resale and ultimate use or consumption off the premises of the one engaging in such fabricating or processing, or hot mix asphalt and crushed stone fabricated by a contractor for use by the contractor in highway or road construction projects funded by tax revenues. "Fabricating or processing tangible personal property for resale" shall be deemed to include providing fabrication and repair services to aircraft owned by nonaffiliated business entities whether commercial, governmental or foreign; provided, that the dealer performing such services qualifies for the credit allowed in § 67-4-2109(b). "Fabricating or processing tangible personal property for resale" shall not include any other type of repair services. "Fabricating or processing tangible personal property for resale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(40) "Final artwork" means tangible personal property or its digital equivalent that is suitable for use in producing advertising materials and includes, but is not limited to, photographs, illustrations, drawings, paintings, calligraphy, models and similar works that are used to produce advertising materials, but does not include preliminary artwork or original sound recordings or video recordings produced by recording studios, television studios, video production studios, or by or for advertising agencies, or masters produced from the original recordings regardless of whether the original recordings or masters are produced in a tangible medium or a digital equivalent;

(41) "Flea market" means a place of business that provides space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market" does not include hotels, convention centers, municipal auditoriums, municipal coliseums, or gun shows, if such gun shows are sponsored by a not-for-profit corporation;

(42) "Flea market operator" means any person who receives compensation for providing space more than two (2) times a year to two (2) or more persons for the purpose of making sales at retail of tangible personal property that, during the usual course of being displayed or offered for sale, is not stored or displayed permanently at that space. "Flea market operator" does not include a hotel, convention center, municipal auditorium, municipal coliseum, or gun show operator, if such gun shows are sponsored by a not-for-profit corporation;

(43) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, dietary supplements, or prepared food;

(44) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the definition of over-the-counter drugs;

(45) "Gross sales" means the sum total of all retail sales of tangible personal property and all proceeds of services taxable under this chapter as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this chapter;

(46) "Industrial machinery" means:

(A)(i) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabrication or processing of tangible personal property for resale and consumption off the premises, or pollution control facilities primarily used for air pollution control or water pollution control, where the use of such machinery, equipment or facilities is by one who engages in such fabrication or processing as one's principal business or who engages in the fabrication or processing of materials into trusses, window units or door units for resale as part of the principal business of the sale of building supplies either within or without this state, or such use by a county, municipality, or water and wastewater treatment authority created by private act or pursuant to the Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 6, or a contractor pursuant to a contract with the county, municipality, or water and wastewater treatment authority for use in water pollution control or sewage systems, also mining machinery, apparatus equipment and materials, with all associated parts and accessories, including repair parts and any necessary repair or installation labor, that is necessary to and primarily for:

(a) The removal, extraction or detachment of coal from land by surface, underground or other lawful methods of mining and the construction or maintenance of necessary ingress and egress from the mine;

(b) The removal, handling and replacement of overburden and

spoils materials; or

(c) The reclamation of mined areas reclaimed under state or federal laws, rules or regulations;

(ii) As used in this chapter, "pollution control facilities" means any system, method, improvement, structure, device or appliance appurtenant thereto used or intended for the primary purpose of eliminating, preventing or reducing air or water pollution, or for the primary purpose of treating, pretreating, recycling or disposing of any hazardous or toxic waste, solid or liquid, when such pollutants are created as a result of fabricating or processing by one who engages in fabricating or processing as such person's principal business activity, which, if released without such treatment, pretreatment, modification or disposal, might be harmful, detrimental or offensive to the public and the public interest;

(B) Machinery that is necessary to and primarily for remanufacturing industrial machinery as defined in subdivision (46)(A) when such utilization is by one whose principal business is that of remanufacturing industrial machinery. For the purposes of this subdivision (46)(B), "remanufacturing" means making new or different products with new or different functions from the scrap materials used to make them;

(C) Machinery utilized in the pre-press and press operations in the business of printing, including plates and cylinders, and including the component parts and fluids or chemicals necessary for the specific mechanical or chemical actions or operations of such machinery, plates and cylinders, regardless of whether or not the operations occur at the point of retail sales;

(D) Such industrial machinery necessary to and primarily for the fabrication and processing of tangible personal property for resale or used primarily for the control of air pollution or water pollution includes, but is not limited to:

(i) Machines used for generating, producing, and distributing utility services, electricity, steam, and treated or untreated water; and

(ii) Equipment used in transporting raw materials from storage to the manufacturing process, and transporting finished goods from the end of the manufacturing process to storage;

(E)(i) Machinery used to package manufactured items, where the use of such machinery is by a person whose principal business is fabricating or processing tangible personal property for resale. Notwithstanding the principal business of the user, this exemption shall also apply where the use of such machinery at a location is to package automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation such that:

(a) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(b) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent;

(ii) To "package," as used in subdivision (46)(E)(i), refers only to the fabrication and/or installation of that packaging that will accompany the product when sold at retail;

(F) Such industrial machinery necessary to and primarily for the fabrication or processing of tangible personal property for resale and consumption off the premises or used primarily for the control of air pollution or water pollution does not include machinery, apparatus and equipment used prior to or after equipment exempted by subdivision (46)(D)(ii), and does not include equipment used for maintenance or the convenience or comfort of workers;

(G) Machinery, apparatus and equipment with all associated parts, appurtenances and accessories, including hydraulic fluids, lubricating oils and greases necessary for operation and maintenance, repair parts and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the fabricating or processing of prescription eyewear, where a majority of such eyewear is ultimately dispensed to patients in states other than Tennessee;

(H)(i) Material handling equipment and racking systems, used by the taxpayer directly and primarily for the storage or handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility, that are purchased beginning one (1) year prior to the start of the construction or expansion and ending one (1) year after the substantial completion of the construction or expansion of the facility, but in no event shall the period exceed three (3) years. "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility, that meets the requirements set out in this subdivision (46)(H), for the storage or distribution of finished tangible personal property. Such facilities shall not include a building where tangible personal property is fabricated, processed, assembled or sold over-the-counter to consumers, except for taxpayers that qualify under chapter 185 of the Public Acts of 1995, or are configuring, testing or packaging computer products. "Configuring" computer products means integrating a computer with peripheral computer products, such as a hard disk drive, additional memory or software. A qualifying facility must also be:

(a) A warehouse or distribution facility constructed in this state through an investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, in a newly constructed and previously unoccupied building and/or equipment for the facility;

(b) An expansion to an existing warehouse or distribution facility, previously qualified under subdivision (46)(H)(i), through an additional investment in excess of ten million dollars ($10,000,000) by the taxpayer, and/or a lessor to the taxpayer over an additional period not exceeding three (3) years, for additions to the building and the purchase of new equipment for use in the expanded facility;

(c) A warehouse or distribution facility in this state that is purchased and either renovated or expanded through an investment in excess of ten million dollars ($10,000,000) in such purchase and renovation or expansion by the taxpayer, and/or a lessor to the taxpayer, including the purchase of new equipment for such a building,

over a period not exceeding three (3) years; or

(d) An expansion to an existing warehouse or distribution facility in this state through an aggregate investment in excess of twenty million dollars ($20,000,000) by the taxpayer, and/or a lessor to the taxpayer, over a period not exceeding three (3) years, consisting of an investment in excess of ten million dollars ($10,000,000) in the renovation or expansion of an existing building and/or the purchase of new equipment for such a building, together with an investment in excess of ten million dollars ($10,000,000) in the construction of a new, previously unoccupied building and/or equipment for such a building;

(ii) A taxpayer shall qualify for the exemption afforded to material handling and racking systems under subdivision (46)(H)(i) by submitting an application to the commissioner for the exemption, together with a plan describing the investment to be made. The application and plan shall be submitted on forms prescribed by the commissioner. The plan shall demonstrate that the requirements of the law will be met. Upon approval of the exemption request and plan for investment, purchases of the equipment may be made without payment of the sales or use tax. However, if the requisite investment is not made in the time period required, or the terms of the statute are not met, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due;

(I) Material handling equipment and racking systems used in a warehouse and distribution facility, subject to all the requirements and conditions of subdivision (46)(H), except:

(i) The required investment in excess of ten million dollars ($10,000,000) may also be made in a previously occupied facility:

(a) Through the purchase of a building, and/or the purchase of new equipment for use in the building no later than one (1) year after the purchase of the building; or

(b) Through the purchase of new equipment for use in a leased building, not qualifying under subdivision (46)(I)(i)(a), made no later than one (1) year after the date of the lease agreement; and

(ii) Any purchases exempted from tax for use in the facility described in this subdivision (46)(I) must be made no later than one (1) year after the purchase of the building under subdivision (46)(I)(i)(a), or no later than one (1) year after the date of the lease agreement under subdivision (46)(I)(i)(b);

(J) "Industrial machinery" does not include machinery, apparatus and equipment, with all associated parts, appurtenances, accessories, repair parts, and necessary repair or taxable installation labor therefor, that is used in the preparation of food for immediate retail sale;

(K) "Industrial machinery" also includes any "computer", "computer network", "computer software", or "computer system", as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware such as printers, plotters, external disc drives, modems, and telephone units, when such items are used in the operation of a qualified data center. For purposes of this subdivision (46)(K), "industrial machinery" includes

repair parts, repair or installation services, and warranty or service contracts, purchased for such items used in the operation of a qualified data center;

(L) "Industrial machinery" includes machinery, apparatus and equipment with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is necessary to and used primarily for the conversion of tangible personal property into taxable specified digital products for resale and consumption off the premises. "Industrial machinery" does not include machinery, apparatus or equipment, with all associated parts, appurtenances, accessories, repair parts and necessary repair or taxable installation labor therefor, that is used primarily for the storage or distribution of such specified digital products following such conversion;

(M) "Industrial machinery" also includes machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories, including hydraulic fluids, lubricating oils, and greases necessary for operation and maintenance, repair parts, and any necessary repair or taxable installation labor therefor, that is necessary to, and primarily for, the purpose of research and development;

(47) "International," as used in connection with telecommunications services, means a telecommunications service that originates or terminates in the United States, and terminates or originates outside the United States, respectively. United States includes the District of Columbia and a United States territory or possession;

(48) "Interstate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession;

(49) "Intrastate," as used in connection with telecommunications services, means a telecommunications service that originates in one (1) United States state or United States territory or possession, and terminates in the same United States state or United States territory or possession;

(50) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser;

(51) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A "lease or rental" may include future options to purchase or extend;

(A) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required

payments;

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subdivision (51), an operator must do more than maintain, inspect, or set-up the tangible personal property; or

(iv) Providing a dumpster or other container for waste or debris removal for a fixed or indeterminate period of time along with the delivery and pickup of the dumpster. A condition of this exclusion is that the provider of the dumpster is exclusively responsible for delivery and pickup of the dumpster;

(B) "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1);

(C) This subdivision (51) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code (26 U.S.C.), or title 47, chapter 2A, or other federal, state or local law;

(D) This subdivision (51) shall be applied only prospectively from the date of adoption [January 1, 2008] and shall have no retroactive impact on existing leases or rentals;

(52) "Livestock and poultry feed" means and includes all grains, minerals, salts, proteins, fats, fibers and all vitamins, acids and drugs used and mixed with such ingredients as a growth stimulant, disease preventive, to stimulate feed conversion and make a complete feed;

(53) "Local merchant" means a third-party merchant, including, but not limited to, a kitchen, restaurant, grocery store, retail store, convenience store, or business of another type, that is not under common ownership or control with the delivery network company;

(54) "Local tax jurisdiction" means a geographic area where the same local option tax, either county tax or a combination of county and municipal tax, applies;

(55) "Marketplace" means a physical or electronic place, platform, or forum, including, but not limited to, a store, booth, internet website, catalog, or dedicated sales software application, where tangible personal property or any of the things or services taxable under this chapter are offered for sale;

(56) "Marketplace facilitator":

(A) Means a person, including any affiliate of the person, that:

(i) For consideration, regardless of whether characterized as fees from the transaction, contracts, or otherwise agrees with a marketplace seller to facilitate the sale of the marketplace seller's tangible personal property or things or services taxable under this chapter through a physical or electronic marketplace operated, owned, or otherwise controlled by the person or the person's affiliate; and

(ii) Either directly or indirectly through contracts, agreements, or other arrangements with third parties, collects the payment from the purchaser of the marketplace seller's tangible personal property or things

or services taxable under this chapter and transmits payment to the marketplace seller;

(B) Does not include:

(i) A person who exclusively provides advertising services, including listing products for sale, so long as the person does not also engage directly or indirectly through one (1) or more affiliated persons in those activities described in subdivision (56)(A) that are unrelated to advertising services;

(ii) A person whose activity with respect to marketplace sales is limited to providing payment processing services between two (2) or more parties;

(iii) A derivatives clearing organization, designated contract market, or foreign board of trade or swap execution facility that is registered with the Commodity Futures Trading Commission ("CFTC registered platforms"), or any clearing members, futures commission merchants, or brokers using the services of CFTC registered platforms; or

(iv) A person that is a delivery network company; except, that a delivery network company that meets the definition set forth in subdivision (56)(A) may elect, in a reasonable manner and duration prescribed by the department, to be deemed a marketplace facilitator pursuant to this chapter; and

(C) Includes a peer-to-peer car sharing program as defined in § 67-4-1901;

(57) "Marketplace seller" means a person who makes sales through any marketplace operated, owned, or controlled by a marketplace facilitator;

(58) "Micro market" means an unattended food establishment that:

(A) Includes one (1) or more micro market displays;

(B) Has an automated payment kiosk or other device designated for self-checkout by the consumer by means of electronic payment;

(C) Has controlled entry not accessible by the general public; and

(D) Provides commercially prepackaged food or ready-to-eat food, including, without limitation:

(i) Items prepackaged in tamper-evident packaging;

(ii) Products containing nutrition information required by the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.); or

(iii) Products containing a freshness or expiration date;

(59) "Micro market display" means a place where food being sold by a micro market is displayed, including a:

(A) Refrigerator or refrigerated cooler;

(B) Freezer;

(C) Vending machine;

(D) Open rack;

(E) Beverage dispenser; or

(F) Single-service coffee brewer;

(60) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, Public Law 106-252 (4 U.S.C. § 124(7));

(61) "Mobility enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include durable

medical equipment that:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(62) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases;

(63) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax;

(64) "Model 3 seller" means a seller that has sales in at least five (5) states that are members of the Streamlined Sales and Use Tax Agreement, has total annual sales revenue of at least five hundred million dollars ($500,000,000), has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subdivision (64), a seller includes an affiliated group of sellers using the same proprietary system;

(65) "OEM headquarters company" means an original equipment manufacturer that is engaged in the business of manufacturing motor vehicles and qualifies to receive the credit provided in § 67-6-224, or any affiliate thereof. For purposes of this subdivision (65), "affiliate" has the same meaning as provided in § 67-4-2004;

(66) "OEM headquarters company vehicle" means any motor vehicle subject to registration in accordance with title 55 that is owned by an OEM headquarters company, whether used for sales or service training, advertising, quality control, testing, evaluation or such other uses as approved by the commissioner, and, further, including motor vehicles provided by the OEM headquarters company for use by eligible employees and their eligible family members in accordance with policies established by the OEM headquarters company and approved by the commissioner;

(67)(A) "Over-the-counter-drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR 201.66. The "over-the-counter-drug" label includes:

(i) A drug facts panel; or

(ii) A statement of the active ingredients, with a list of those ingredients contained in the compound, substance or preparation;

(B) "Over-the-counter-drug" does not include grooming and hygiene products;

(68) "Permanent location" does not include any booths or space located at a flea market, antique mall, craft show, antique show, gun show, auto show or any similar type business;

(69) "Person" includes any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, any governmental agency whose services are essentially a private commercial

concern, or other group or combination acting as a unit, in the plural as well as the singular number. "Person" further includes any political subdivision or governmental agency, including electric membership corporations or cooperatives, and utility districts, to the extent that such agency sells at retail, rents or furnishes any of the things or services taxable under this chapter;

(70) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" shall be within the licensed service area of the home service provider;

(71) "Preliminary artwork" means tangible personal property and digital equivalents that are produced by an advertising agency in the course of providing advertising services solely for the purpose of conveying concepts or ideas or demonstrating an idea or message to a client and includes, but is not limited to concept sketches, illustrations, drawings, paintings, models, photographs, storyboards or similar materials;

(72) "Prepaid calling service" means the right to access exclusively telecommunications services that must be paid for in advance and that enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(73) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service, as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services that must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount;

(74)(A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food;

(B) "Prepared food" in subdivision (74)(A)(ii) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration (FDA) in chapter 3, § 401.11 of the FDA's food code so as to prevent food borne illnesses;

(75) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state;

(76) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two (2) or more prewritten computer software programs or prewritten

portions of computer software does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of that person's modifications or enhancements. "Prewritten computer software" or a prewritten portion of the computer software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software;

(77) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(78)(A) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the replacement, corrective, or supportive device worn on or in the body to:

(i) Artificially replace a missing portion of the body;

(ii) Prevent or correct physical deformity or malfunction; or

(iii) Support a weak or deformed portion of the body;

(B) "Prosthetic device" does not include:

(i) Corrective eyeglasses; or

(ii) Contact lenses;

(79) "Protective equipment" means items for human wear, designed as protection of the wearer against injury or disease or as protection against damage or injury of other persons or property, but not suitable for general use;

(80) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price;

(81) "Qualified data center" means a data center that has made a required capital investment in excess of one hundred million dollars ($100,000,000) during an investment period not to exceed three (3) years and that creates at least fifteen (15) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states' average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (81), "required capital investment" means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of

this subdivision (81), "full-time employee job" means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (81) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (81), "good cause" means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

(82) "Rain check" means the seller allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock;

(83)(A) "Resale" means a subsequent, bona fide sale of the property, services, or taxable item by the purchaser. "Sale for resale" means the sale of the property, services, or taxable item intended for subsequent resale by the purchaser. Any sales for resale shall, however, be in strict compliance with rules and regulations promulgated by the commissioner;

(B)(i) "Sale for resale" does not include a sale of tangible personal property or software to a dealer for use in the business of selling services. Property used in the business of selling services includes, but is not limited to, property that is regularly furnished to purchasers of the service without separate charge. A dealer that sells services shall be considered the end user and consumer of property used in selling, performing, or furnishing such services. However, "sale for resale" does include the following items in the circumstances described:

(a) Repair parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the dealer's performance of repair services, regardless of whether the dealer makes a separately stated charge for such property;

(b) Installation parts or other property sold to a dealer if such property is subsequently transferred to the customer in conjunction with the installation of property that remains tangible personal property following such installation, regardless of whether the dealer makes a separately stated charge for such property;

(c) Mobile telephones and similar devices sold to a dealer if such property is subsequently transferred to the customer in conjunction with the sale of commercial mobile radio services (CMRS), regardless of whether the dealer makes a separately stated charge for such property; and

(d) Food or beverages sold to a hotel, motel, inn or other dealer that provides lodging accommodations if such food or beverages are subsequently transferred to the customer in conjunction with the dealer's sale of lodging accommodations to the customer, regardless of whether the dealer makes a separately stated charge for such property;

(ii) "Sale for resale" does not include a sale of services to a dealer for use in the business of selling, leasing, or renting tangible personal property or computer software. Services used in the business of selling,

leasing, or renting tangible personal property include, but are not limited to, services such as cleaning, maintaining, or repairing property that is held as inventory for sale, lease, or rental. A dealer that sells, leases, or rents tangible personal property or computer software shall be considered the end user and consumer of services used in conducting such business;

(iii) Nothing in this subdivision (83) shall be construed as amending or otherwise effecting the exemption provided in § 67-6-392;

(84) "Retail sale" or "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent;

(85) "Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, use, consumption, storage to be used or consumed in this state or furnishing any of the things or services taxable under this chapter and every marketplace facilitator;

(86)(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale; provided, that where title to property is taken by an industrial development corporation, within the meaning of title 7, chapter 53, but the property is leased to a taxpayer, the transaction shall be regarded, for purposes of this chapter, as a sale to and purchase by the industrial development corporation followed by a lease, regardless of whether the lessee has an option to purchase any or all of the property from the industrial development corporation;

(C) "Sale" includes the furnishing of any of the things or services taxable under this chapter;

(D) "Sale" includes the sale, gifts in connection with valuable contributions, exchange or other disposition of admission, dues or fees to membership sports and recreation clubs, places of amusement or recreational or athletic events or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. Such establishments or facilities include, but are not limited to, the amusement and recreational facilities and motion picture theaters described in the standard industrial classification index prepared by the bureau of the budget of the federal government;

(E) "Sale" includes the renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis;

(F) "Sale" includes the processing of photographic film into negatives and/or photographic prints for resale;

(G) "Sale" includes charges for admission, dues or fees that constitute a sale under this subdivision (86), except tickets for admission sold to a Tennessee dealer for resale upon presentation of a resale certificate. Dealers registered with the state for sales tax purposes may purchase tickets for resale without payment of tax upon presentation to the vendor of a valid certificate of resale;

(H) "Sale" includes all transactions that the commissioner, upon investigation, finds to be in lieu of sales;

(I) "Sale" includes a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(J) "Sale" includes a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars ($100) or one percent (1%) of the total required payments;

(K) "Sale" includes any transfer of title or possession, or both, lease or licensing, in any manner or by any means whatsoever of computer software for consideration, and includes the creation of computer software on the premises of the consumer and any programming, transferring or loading of computer software into a computer; and

(L) "Sale" includes any sale, as otherwise defined in this subdivision (86), made or facilitated by a marketplace facilitator;

(87)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges; and

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise;

(B) "Sales price" does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to

the purchaser; and

(iv) Credit for any trade-in, as determined by § 67-6-510, that is separately stated on an invoice or similar billing document given to the purchaser;

(C) "Sales price" includes consideration received by the seller from third parties, if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(a) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount, where the coupon, certificate or documentation is authorized, distributed or granted by a third party, with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(b) The purchaser identifies itself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or

(c) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser, or on a coupon, certificate or other documentation presented by the purchaser;

(88) "School art supplies" means an item commonly used by a student in a course of study for artwork. For purposes of this chapter, the following is an all-inclusive list of "school art supplies":

(A) Clay and glazes;

(B) Paintbrushes for artwork;

(C) Paints, acrylic, tempera, and oil;

(D) Sketch and drawing pads; and

(E) Watercolors;

(89) "School computer supplies" means an item commonly used by a student in a course of study in which a computer is used. For purposes of this chapter, the following is an all-inclusive list of "school computer supplies":

(A) Computer printers;

(B) Computer storage media, diskettes, compact disks;

(C) Handheld electronic schedulers, except devices that are cellular phones;

(D) Personal digital assistants, except devices that are cellular phones; and

(E) Printer supplies for computers, printer paper, printer ink;

(90) "School instructional materials" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. For purposes of this chapter, the following is an all-inclusive list of "school instructional materials":

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks;

(91) "School supplies" means an item used by a student in a course of study. For purposes of this chapter, the following is an all-inclusive list of "school supplies":

(A) Binders;

(B) Blackboard chalk;

(C) Book bags;

(D) Calculators;

(E) Cellophane tape;

(F) Compasses;

(G) Composition books;

(H) Crayons;

(I) Erasers;

(J) Folders, expandable, pocket, plastic and manila;

(K) Glue, paste, and paste sticks;

(L) Highlighters;

(M) Index cards;

(N) Index card boxes;

(O) Legal pads;

(P) Lunch boxes;

(Q) Markers;

(R) Notebooks;

(S) Paper, loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets;

(92) "Service address" means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. In the event this may not be known, service address means the origination point of the signal of the telecommunication service first identified by either the seller's telecommunication system or in information received by the seller from its service provider, where the system used to transport the signal is not that of the seller. In the event that neither the location of the telecommunications equipment nor the origination point of the signal are known, service

address means the location of the customer's place of primary use;

(93) "Software" means computer software;

(94) "Specified digital products" means electronically transferred digital audio-visual works, digital audio works and digital books. For purposes of this subdivision (94), "electronically transferred" means obtained by the purchaser by means other than tangible storage media;

(95) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use;

(96) "Storage" means and includes any keeping or retention in this state of tangible personal property for use or consumption in this state, or for any purpose other than sale at retail in the regular course of business; provided, that temporary storage pending shipping or mailing of tangible personal property to nonresidents of Tennessee shall not constitute a taxable use in Tennessee;

(97)(A) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software;

(B) "Tangible personal property" does not include signals broadcast over the airwaves;

(C) "Tangible personal property" does not include fiber-optic cable after it has become attached to a utility pole, building, or other structure or installed underground. Such fiber-optic cable is deemed realty for purposes of this chapter upon installation;

(D) "Tangible personal property" does not include mains, pipes, pipelines, or tanks after it has become attached to a building, or other structure, or installed underground for conducting steam, heat, water, wastewater, oil, electricity, gas, or any property, substance, or product capable of transportation or conveyance therein or that is protected thereby, excluding propane tanks for residential use and above-ground storage tanks that can be moved without disassembly and are not affixed to the land. Such mains, pipes, pipelines, and tanks are deemed realty for purposes of this chapter upon installation;

(E) "Tangible personal property" does not include surface, underground, or elevated railroads, or railroad structures, substructures, and superstructures, tracks and the metal thereon, branches, switches, and other improvements or structures permitted or authorized to be made in, upon, or under public or private property. Such railroads, railroad structures, substructures, superstructures, tracks and the metal thereon, branches, switches, and other improvements made in, upon, or under public or private property are deemed realty for purposes of this chapter upon installation;

(98)(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or

protocol of the content for purposes of transmission, conveyance or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added;

(B) "Telecommunications service" does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by electronic transmission to a purchaser, where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service (47 U.S.C. § 522(6)), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3*;*

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, computer software, music, video, reading materials or ringtones;

(99) "Textbook" means a printed book that contains systematically organized educational information that covers the primary objectives of a course of study. A textbook may contain stories and excerpts of popular fiction and nonfiction writings, but does not include a book primarily published and distributed for sale to the general public. The term "textbook" does not include a computer or computer software;

(100) "Time-share estate" means an ownership or leasehold estate in property devoted to a time-share fee, tenants in common, time span ownership, interval ownership, and a time-share lease;

(101) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco;

(102) "Unattended" means sales of goods are processed electronically without the physical presence of a person operating the market sales checkout;

(103)(A) "Use" means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business;

(B) "Use" means the coming to rest in Tennessee of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee in interstate commerce; provided, that the labeling, temporary storage, and other handling in connection with mailing or shipping of the catalogues, advertising fliers and other advertising publications in inter-

state commerce to nonresidents of Tennessee shall not constitute a taxable use in Tennessee; and

(C) "Use" also means and includes the consumption of any of the services and amusements taxable under this chapter;

(104) "Use tax" includes the "use," "consumption," "distribution" and "storage" as defined in this section;

(105) "Video game digital product" means the right to access and use computer software that facilitates human interaction with a user interface to generate visual feedback for amusement purposes, when possession of the computer software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis;

(106)(A) "Video programming services" means programming provided by or generally considered comparable to programming provided by a television broadcast station and shall include cable television services sold by a provider authorized pursuant to title 7, chapter 59, wireless cable television services (multipoint distribution service/multichannel multipoint distribution service) and video services provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology;

(B) "Video programming services" does not include any of the following:

(i) Digital products transferred electronically, including, but not limited to, software, ringtones, and reading materials such as books, magazines, and newspapers;

(ii) Audio and video programming services provided by a commercial mobile service provider as defined in 47 U.S.C. § 332(d);

(iii) Audio and video programming services provided as part of, or incidental to, internet access service, such as, but not limited to, video capable email; provided, that the services are not generally considered comparable to programming provided by a television broadcast station; and

(iv) Direct-to-home satellite television programming services; and

(107) "Workbook" means a printed booklet that contains problems and exercises in which a student may directly write answers or responses to the problems and exercises. The term "workbook" does not include a computer or computer software.

History.

Acts 1947, ch. 3, §§ 2, 4; C. Supp. 1950, §§ 1248.51, 1248.53 (Williams, §§ 1328.23, 1328.25); Acts 1951, ch. 3, § 1; modified; 1955, ch. 51, §§ 1-5, 10; 1955, ch. 242, §§ 1, 8; impl. am. Acts 1959, ch. 9, § 14; Acts 1959, ch. 15, § 1; 1963, ch. 38, §§ 1, 2, 7; 1963, ch. 172, §§ 1, 2; 1965, ch. 3, § 1; 1965, ch. 335, § 1; 1968, ch. 556, § 1; 1968, ch. 601, § 1; 1969, ch. 95, § 1; 1970, ch. 390, § 1; 1971, ch. 117, § 1; 1971, ch. 149, § 1; 1971, ch. 151, § 1; 1972, ch. 528, § 1; 1972, ch. 709, § 1; 1972, ch. 731, § 1; 1972, ch. 757, § 1; 1972, ch. 769, § 1; 1973, ch. 179, § 1; 1974, ch. 778, § 1; 1976, ch. 442, § 1; 1977, ch. 42, § 1; 1977, ch. 250, § 1; 1978, ch. 565, §§ 1, 2; 1978, ch. 789, §§ 1, 2; 1978, ch. 921, § 1; 1979, ch. 352, § 1; 1980, ch. 602, § 1; 1981, ch. 229, § 1; T.C.A. (orig. ed.), §§ 67-3002, 67-3017; Acts 1984 (Ex. Sess.), ch. 13, §§ 2, 3, 5; 1984, ch. 523, § 1; 1984, ch. 762, §§ 1-3; 1984, ch. 959, § 1; 1984, ch. 987, § 1; 1985, ch. 25, § 3; 1985, ch. 332, §§ 1, 2; 1985, ch. 389, § 2; 1985, ch. 406, §§ 1, 3, 4, 6, 7; 1985, ch. 416, § 1; 1985, ch. 456, § 1; 1985, ch. 469, §§ 1, 2; 1986, ch. 567, § 1; 1986, ch. 815, § 1; 1986, ch. 924, § 1; 1987, ch. 185, § 1; 1987, ch. 295, § 1; 1987, ch. 428, § 3; 1988, ch. 572, § 1; 1988, ch. 789, § 1; 1989, ch. 312, § 5; 1991, ch. 29, § 1; 1991, ch. 41, § 2; 1991, ch. 80, § 1; 1991, ch. 503, § 3; 1992, ch. 917, § 1; 1992, ch. 1007, §§ 1, 2; 1993,

ch. 51, §§ 1-3; 1993, ch. 68, §§ 1, 2; 1993, ch. 409, §§ 1, 2; 1994, ch. 552, § 2; 1994, ch. 852, § 1; 1995, ch. 168, §§ 1, 2; 1995, ch. 185, § 1; 1995, ch. 384, § 1; 1995, ch. 544, §§ 3, 4; 1996, ch. 721, §§ 1, 2; 1996, ch. 729, § 1; 1996, ch. 739, § 1; 1996, ch. 770, § 1; 1996, ch. 922, § 1; 1997, ch. 385, § 1; 1997, ch. 451, §§ 1, 2; 1998, ch. 732, § 1; 1998, ch. 976, § 1; 1998, ch. 1038, § 1; 1998, ch. 1057, §§ 1, 2; 1999, ch. 413, §§ 1, 3; 1999, ch. 423, § 4; 1999, ch. 484, §§ 1-3; 2002, ch. 708, § 1; 2002, ch. 719, §§ 1-4; 2002, ch. 856, § 5b; 2003, ch. 9, § 1; 2003, ch. 357, §§ 3-16; 2004, ch. 782, §§ 1-6, 15; 2004, ch. 924, § 17; 2004, ch. 959, §§ 1-4, 59, 60, 68; 2005, ch. 311, §§ 1, 2; 2005, ch. 398, § 2; 2005, ch. 499, §§ 7, 19, 20, 48-50, 52-55, 60, 68; 2006, ch. 975, § 1; 2006, ch. 1019, §§ 33, 34, 44; 2007, ch. 602, §§ 35, 36, 41, 42, 51, 53, 57-68; 2008, ch. 1106, §§ 9, 11, 18, 22, 25, 26; 2009, ch. 530, §§ 8, 18, 24, 35, 50, 53, 56, 114; 2010, ch. 1134, §§ 1, 33; 2011, ch. 508, §§ 30, 32; 2012, ch. 842, § 8; 2014, ch. 994, § 1; 2015, ch. 52, § 1; 2015, ch. 81, § 1; 2015, ch. 249, § 1; 2015, ch. 420, § 1; 2015, ch. 504, § 17; 2015, ch. 514, § 21; 2016, ch. 1001, § 1; 2019, ch. 392, § 1; 2019, ch. 483, § 1; 2019, ch. 501, § 1; 2020, ch. 646, §§ 1-6; 2020, ch. 796, § 4; 2021, ch. 86, § 1; 2021, ch. 289, § 1.

Compiler's Notes.

For Preamble to the act concerning intent of the general assembly regarding exemptions from sales and use taxes for certain charges related to fiber-optic cable, see Acts 2019, ch. 501.

Acts 2019, ch. 483, § 2 provided the act shall not be given retroactive application, and shall only apply prospectively to tax liabilities incurred on or after July 1, 2019.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 133, 134; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment by ch. 392, in the fourth sentence of (B) in the definition of "business", inserted "including online sales" following "does not include sales," "300,00" for "100,000" preceding "per calendar year," and substituted "must remain in effect" for "shall remain in effect".

The 2019 amendment by ch. 483 added (A)(iv) in the definition of "lease or rental property".

The 2019 amendment by ch. 501 added (C) in the definition of "tangible personal property".

The 2020 amendment by ch. 646 added (N) in the definition of "dealer"; added "and every marketplace facilitator" in the definition of "retailer"; added (L) in the definition of "sale"; and added the definitions of "delivery network company", "delivery services", "local merchant", "marketplace", "marketplace facilitator" and "marketplace seller".

The 2020 amendment by ch. 796 added (C) in the definition of "marketplace facilitator".

The 2021 amendment by ch. 86 added (D) and (E) in the definition for "Tangible personal property".

The 2021 amendment by ch. 289 added definitions for "Micro market", "Micro market display", and "Unattended".

Effective Dates.

Acts 2019, ch. 392, § 2. May 10, 2019.

Acts 2019, ch. 483, § 3. July 1, 2019.

Acts 2019, ch. 501, § 3. July 1, 2019.

Acts 2020, ch. 646, § 11. October 1, 2020.

Acts 2020, ch. 796, § 8. October 1, 2020 at 12:01 a.m.

Acts 2021, ch. 86, § 2. July 1, 2021.

Acts 2021, ch. 289, § 6. October 1, 2021.

Attorney General Opinions.

An online marketplace facilitator, who engages in the regular, systematic solicitation of a consumer market in Tennessee, is a dealer if it consummates the sales transactions with those consumers. The Department of Revenue is empowered to promulgate rules requiring online marketplace facilitators to collect and remit sales tax on behalf of out-of-state dealers, provided the facilitators themselves are not out-of-state dealers. OAG 19-03, 2019 Tenn. AG LEXIS 3 (3/12/2019).

67-6-103. Deposit and allocation of receipts — Transportation equity trust fund — Other special allocations.

(a) The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by the commissioner under this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) Twenty-nine and one hundred forty-one ten-thousandths percent (29.0141%) of such moneys shall be earmarked and allocated specifically and exclusively to the general fund;

(2) Sixty-five and nine hundred seventy ten-thousandths (65.0970%) of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes; and

(3)(A) Four and six thousand thirty ten-thousandths percent (4.6030%) shall be appropriated to the several incorporated municipalities within this state to be allocated and distributed to them monthly by the commissioner of finance and administration, in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state, according to the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installation of officials, on the population basis determined under regulations of the department of economic and community development and certified by that office to the commissioner; provided, that an accurate census of population has been certified to the department of economic and community development by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law;

(B)(i) A municipality having a population of one thousand one hundred (1,100) or more persons, according to the 1970 federal census or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation, as shown by the tax assessment rolls or books of the municipality, of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, is defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a premiere type tourist resort may elect to receive four and six thousand thirty ten-thousandths percent (4.6030%) of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist resort pursuant to the election, the amount that would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(ii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also owning a golf course and ski slope shall also receive an amount equal to the amount distributed pursuant to subdivision (a)(3)(B)(i). Any distribution made to such a municipality shall be earmarked and paid from the general fund for the purpose of assisting in the retirement of the convention center obligations in connection with the acquisition, construction and operation of the convention center;

(iii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also containing within its boundaries a theme park of not less than eighty (80) acres shall also receive an amount equal to the distribution pursuant to subdivision (a)(3)(B)(i);

(iv)*(a)* A municipality meeting the criteria set forth in subdivision (a)(3)(B)(ii) shall also receive in addition to amounts authorized in

this subsection (a) in the 1988-1989 fiscal year, an amount equal to fifty-six percent (56%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(ii), and an amount equal to ninety percent (90%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(b) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(iii) shall also receive, in addition to amounts authorized in this subsection (a) in the 1988-1989 fiscal year, an amount equal to sixty percent (60%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(iii), and an amount equal to ninety-six percent (96%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(v)*(a)* The collective amounts paid under subdivisions (a)(3)(B)(i)-(iv) shall be limited to the collective amounts paid under such subdivisions for the 1999-2000 fiscal year;

(b) During the 2021-2022 fiscal year, for any amounts that would have been paid under subdivisions (a)(3)(B)(i)-(iv) but for the limitation in subdivision (a)(3)(B)(v)(*a*), those amounts must be allocated as follows:

(1) Fifty percent (50%) to the county in which the municipality is located, for use by the county for educational purposes; and

(2) Fifty percent (50%) to the municipality where the sale occurred;

(c) During the 2022-2023 fiscal year and subsequent fiscal years, for any amounts that would have been paid under subdivisions (a)(3)(B)(i)-(iv) but for the limitation in subdivision (a)(3)(B)(v)(*a*), those amounts must be allocated as follows:

(1) Fifty percent (50%) to the county in which the municipality is located, for use by the county for educational purposes;

(2) Twenty-five percent (25%) to the municipality where the sale occurred; and

(3) Twenty-five percent (25%) to the state general fund;

(C) Any municipality shall have the right to take not more than four (4) special censuses at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the department of economic and community development. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1 following the certification of the census results by the federal bureau of the census or the department of economic and community development to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as provided in this subdivision (a)(3)(C);

(D) Any other such special census of the entire municipality taken in the same manner provided in this section, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under this section;

(E) Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of a sum equal to one percent (1%) of the monthly allocation of the four and six thousand thirty ten-thousandths percent (4.6030%) of sales tax collections allocated to incorporated municipalities. This sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance at such conferences and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and with the advice of cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(F)(i) A county ranking in the first quartile of county economic distress in the United States for fiscal year 2006, as determined pursuant to subdivision (a)(3)(F)(v) and bordering on, or crossed by, the Tennessee River, may elect to be a "Tennessee River resort district" for purposes of this chapter. A municipality within such county and located within three (3) miles of the nearest bank of the Tennessee River, may also elect to be a "Tennessee River resort district" for purposes of this chapter. Notwithstanding any other provision of law to the contrary, as an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a Tennessee River resort district shall receive four and six thousand thirty ten-thousandths percent (4.6030%) of the tax actually collected and remitted by dealers within the boundaries of such district. Any distribution made to a Tennessee River resort district pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a Tennessee River resort district pursuant to the election, the amount that would have been received by such district had the district not exercised the election shall be earmarked and allocated to the general fund. This subdivision (a)(3)(F)(i) shall also apply in any county that has a population of less than ten thousand (10,000), according to the 2000 federal census or any subsequent federal census, and borders the Tennessee River and a county included within the Tennessee River resort district. This subdivision (a)(3)(F)(i) shall also apply in any county having a population of not less than twelve thousand three hundred sixty-nine (12,369) nor more than twelve thousand four hundred fifty (12,450) and in any county having a population of not less than seventeen thousand nine hundred (17,900) nor more than eighteen thousand (18,000), all according to the 2000 federal census or any subsequent federal census, and that border the Tennessee River;

(ii)*(a)* Subject to subdivision (a)(3)(F)(iv), a county, or municipality within a county, described in subdivision (a)(3)(F)(i) may elect Tennessee River resort district status by adopting a resolution or ordinance approved by a two-thirds (⅔) vote of the legislative body of the jurisdiction. A county, or municipality within a county, described in subdivision (a)(3)(F)(i) that has elected Tennessee River resort district status may repeal such election by adopting a resolution or ordinance approved by a two-thirds (⅔) vote of the legislative body of the jurisdiction;

(b)(1) A county originally eligible to elect Tennessee River resort district status under chapter 212 of the Public Acts of 2005, and initially electing Tennessee River resort district status after August 1, 2007, may elect Tennessee River resort district status for purposes of this subdivision (a)(3)(F) only and not for the purposes of title 57, chapter 4, part 1, by including the following language in the electing resolution:

Notwithstanding the provisions of Tennessee Code Annotated, §§ 57-4-101(a)(18) and 57-4-102(37), to the contrary, _____ County shall not be considered a Tennessee River Resort District for purposes of Tennessee Code Annotated, Title 57, Chapter 4, Part 1.

(2) In order for the election to be effective, all eligible cities within the county must elect Tennessee River resort district status before the county makes the election. Municipalities having a population of not less than two thousand six hundred (2,600) nor more than two thousand seven hundred fifty (2,750), according to the 2000 federal census or any subsequent federal census, making the election as provided in this subdivision (a)(3)(F)(ii) shall not receive less in state shared taxes under this subdivision (a)(3) than the municipality would otherwise receive had it not made the election;

(c) The approval or nonapproval of a resolution or ordinance adopted pursuant to this subdivision (a)(3)(F)(ii) shall be proclaimed by the presiding officer of the jurisdiction. Within thirty (30) days of adopting the resolution or ordinance, the presiding officer of the jurisdiction shall send a certified copy of the ordinance or resolution to the secretary of state and the commissioner of revenue;

(iii) Notwithstanding any other provision of law to the contrary, of the revenue retained pursuant to an election under subdivision (a)(3)(F)(i), less the amount that would have been received by such district had the district not exercised the election, fifty percent (50%) shall be used exclusively for either the promotion and support of tourism in the jurisdiction or the promotion and support of tourism in conjunction with other jurisdictions so electing Tennessee River resort district status;

(iv) Tennessee River resort district status may be elected by both a county and a municipality within such county, subject to the following provisions:

(a) If the election occurs between January 1, 2006, and June 30, 2006, a municipality electing Tennessee River resort district status

shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the municipality only. A county electing such status shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the county; provided, however, that the county shall only be entitled to receive such revenue outside the jurisdiction of any municipality electing Tennessee River resort district status located in the county; or

(b) If election occurs on and after July 1, 2006, a county electing Tennessee River resort district status prior to a nonelecting municipality shall be entitled to the authorized percentage of tax actually collected and remitted by dealers within the boundaries of the county and within the boundaries of nonelecting municipalities. No nonelecting municipality shall later elect Tennessee River resort district status; provided, that a nonelecting municipality may elect such status prior to election of such status by the county and, in that event, tax collections would be distributed in accordance with subdivision (a)(3)(F)(iv)(*a*);

(v) Prior to July 1, 2005, the commissioner of economic and community development shall publish a map of those Tennessee counties that rank in the first quartile of county economic distress in the United States for fiscal year 2006 based on comparing the following indicators: three-year average unemployment, per-capita market income and poverty rate;

(vi) Notwithstanding any provision of this subdivision (a)(3)(F) to the contrary, the election provided in this subdivision (a)(3)(F) shall only be available to eligible counties and municipalities that make the election prior to July 1, 2008;

(4) Three thousand six hundred seventy-four ten-thousandths percent (0.3674%), or so much thereof as may be required, is appropriated to the department of revenue in addition to its regular appropriation to be expended by it in the administration and enforcement of this chapter; and

(5) Nine thousand one hundred eighty-five ten-thousandths percent (0.9185%) is appropriated to the sinking fund account to be used by the state funding board for the payment of principal and interest becoming due on state bonds issued by the state of Tennessee.

(b)(1) Notwithstanding the allocations provided for in subsection (a), all moneys received under this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation, railways, or water carriers on or after July 1, 1988, shall be deposited by the commissioner in a separate account to be known as the transportation equity trust fund. The funds in this account shall be used by the department of transportation for railways, aeronautics, and waterways related programs and activities. This subsection (b) does not supersede or affect former § 67-3-501 [repealed].

(2) It is declared to be the legislative intent that railways, aeronautics and waterways programs and operations are vital to the economic and social development of this state and as such should be considered an equal priority of the department in the administration of its programs.

(c)(1) Notwithstanding any law to the contrary, all revenue generated from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) and from the tax levied at the rate of two and three quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600) but less than or equal to three thousand two hundred dollars ($3,200) on the sale or use of any single article of personal property pursuant to chapter 856, § 4 of the Public Acts of 2002 shall be paid into the state general fund and allocated exclusively for general state purposes.

(2) Notwithstanding any law to the contrary, all revenue generated from the one-half percent (0.5%) increase in the sales and use tax rate that became effective April 1, 1992, shall be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12). Revenue generated from one-half percent (0.5%) of the tax rate provided in § 67-6-228 shall continue to be deposited in the state general fund and earmarked for education purposes in kindergarten through grade twelve (K-12) regardless of whether the tax rate provided in § 67-6-228 is reduced below six percent (6%).

(d)(1)(A)(i) Notwithstanding the allocations provided for in subsection (a), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional baseball (American or National League), basketball (National Basketball Association), soccer (Major League Soccer), or major or minor league professional hockey (National Hockey League, or Central Hockey League or East Coast Hockey League) franchise for that municipality, and only if the municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount shall be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to events of the major or minor league professional sports franchise and also the sale of food and drink sold on the premises of the sports facility in conjunction with those games, parking charges, and related services, as well as the sale by the major or minor league professional sports franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a professional sports franchise. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(ii)*(a)* In addition to the allocations provided in subdivision (d)(1)(A)(i), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional football franchise (National Football League or Canadian Football League, or its successors or assigns), and only if such municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of such tax revenue under this section, then an amount must be apportioned and distributed to the municipality

equal to the amount of state tax revenue derived from the sale of admissions to all events occurring at the sports facility of the major league professional football franchise and also all sales of food, drinks, and merchandise sold on the premises of the sports facility in conjunction with those events, all parking charges, and all related services, all sales by the major league professional football franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a major league professional football franchise. The allocation of state tax revenue provided in this subdivision (d)(1)(A)(ii)(a) must continue so long as a major league professional football franchise (National Football League or Canadian Football League, or its successors or assigns) holds a lease on the sports facility; provided, however, that the following amounts are excluded from this allocation to pay annual outstanding bonded debt repayment obligations through fiscal year 2029, or the date such existing bonded debt is repaid, whichever is sooner:

Fiscal Year 2022 $3,700,000
Fiscal Year 2023 $3,350,000
Fiscal Year 2024 $3,500,000
Fiscal Year 2025 $3,300,000
Fiscal Year 2026 $3,300,000
Fiscal Year 2027 $3,300,000
Fiscal Year 2028 $3,200,000
Fiscal Year 2029 $3,200,000

(b) Amounts apportioned and distributed to the municipality in accordance with subdivision (d)(1)(A)(ii)(a) must be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality in accordance with title 7, chapter 67, or such other person as designated by the sports authority, to fund capital projects and the payment of debt service for capital projects at the sports facility of the major league professional football franchise, associated with the sports facility of the major league professional football franchise.

(c) In addition to the allocations provided in subdivision (d)(1)(A)(ii)(a), an amount must also be apportioned and distributed to the municipality equal to one-half (½) the amount of state tax revenue, exclusive of the revenue earmarked pursuant to subsection (c), derived from all sales in a designated area not exceeding one hundred thirty (130) acres contiguous to the sports facility and surrounding parking area of the major league professional football franchise; provided, that such acreage is not separated by a flowing navigable waterway. Such acreage must be designated by ordinance or resolution of the legislative body of the municipality in which the sports facility is located, and is subject to the approval of the commissioner of finance and administration. Such amounts distributed to the municipality are for the exclusive use of the sports authority, or comparable municipal agency formally designated by the

municipality in accordance with title 7, chapter 67, or such other person as designated by the sports authority, to fund capital projects and the payment of debt service for capital projects at the sports facility of the major league professional football franchise, associated with the sports facility of the major league professional football franchise, or any onsite or offsite infrastructure necessary for the operation of the sports facility of the major league professional football franchise. Apportionment and distribution of state tax revenue pursuant to this subdivision (d)(1)(A)(ii)(*c*) must continue for a period of thirty (30) years after the issuance of the initial debt service to be underwritten by the sports authority, or comparable municipal agency formally designated by the municipality in accordance with title 7, chapter 67, or such other person as designated by the sports authority, or thirty-five (35) years from July 1, 2021, whichever is sooner; provided, however, that the time periods provided in this subdivision (d)(1)(A)(ii)(*c*) are not affected by the prepayment or satisfaction of underwritten debt service prior to thirty (30) years after the issuance of the initial debt service as provided in this subdivision (d)(1)(A)(ii)(*c*). Thirty-six (36) months after the creation of such designated area, and continuing every thirty-six (36) months thereafter, the sports authority, or comparable municipal agency formally designated by the municipality in accordance with title 7, chapter 67, or such other person as designated by the sports authority shall prepare and submit reports detailing the fiscal performance of the designated area to the finance, ways and means committees of the house of representatives and the senate and the department of finance and administration.

(iii) If an indoor sports facility owned by a sports authority organized pursuant to title 7, chapter 67, in which a professional sports franchise is a tenant, exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to all other events occurring at the indoor sports facility and from all other sales of food and drink and other authorized goods or products sold on the premises of the sports facility, parking charges, and related services. The amounts distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67. Such amounts shall be used exclusively for the payment of, or the reimbursement of expenses associated with securing current, expanded, or new events for indoor sports facilities owned by a municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(iv)*(a)* Notwithstanding the allocations provided for in subsection (a), if a franchise for a minor league affiliate of a major league baseball team (American or National League) playing at the Class AA level or higher locates in a municipality in this state and if the municipality constructs a new stadium for the franchise, then at such time as the

franchise begins operating in the new stadium, and for a period of thirty (30) years thereafter, an amount shall be apportioned and distributed to the entity that is responsible for retirement of the debt on and maintenance of the stadium in the municipality equal to the amount of state and local tax revenue derived from the sale of admissions to games of the professional sports franchise, and also the sale of food and drink sold on the premises of the stadium used in conjunction with those games, parking charges, and related services, as well as the sale by the professional sports franchise, within the county in which the games take place, of authorized franchise goods and products associated with its operations as a professional sports franchise less local taxes collected in the year preceding the new stadium occupancy. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(b) If the stadium described in subdivision (d)(1)(A)(iv)(*a*) is placed in service after December 31, 2020, and on or before December 31, 2025, within any county with a population greater than four hundred thousand (400,000), according to the 2010 federal census or any subsequent federal census, and the projected cost of private development expected by the county to be constructed proximate to the stadium exceeds one hundred million dollars ($100,000,000), then the following allocation of state and local tax revenue applies in lieu of the allocation otherwise provided in subdivision (d)(1)(A)(iv)(*a*):

(1) An amount must be apportioned and distributed to the entity that is responsible for retirement of the debt on the stadium equal to the amount of state and local sales tax revenue derived from any sale of admission to events occurring within the stadium and from all sales of food, drinks, merchandise, and parking sold from a location on the premises of the stadium in conjunction with any events occurring within the stadium, which is deemed to include sales of souvenirs and other merchandise at a team store located on the premises of the stadium regardless of whether such sales occur during an event or during other store hours; and

(2) All amounts received by the entity that is responsible for retirement of the debt on the stadium under this subdivision (d)(1)(A)(iv)(*b*) must be deposited into a fund entitled the "minor league baseball stadium fund," which must be used exclusively to pay debt service related to the financing or refinancing of the initial construction of the stadium and debt service related to the financing or refinancing of the initial public infrastructure for such stadium construction. Any refinancing must be only up to the outstanding principal amount, and the term of any refinancing shall not extend beyond the date of the original term. For purposes of this subdivision (d)(1)(A)(iv)(*b*)(*2*), "initial public infrastructure" means, in regard to the payment of debt service, those public infrastructure costs for stadium construction that are incurred within the first

three (3) years following July 1, 2021. If the funds received by the entity that is responsible for retirement of the debt on the stadium under this subdivision (d)(1)(A)(iv)(*b*) in any fiscal year exceed the total of the debt service requirements for that year, the surplus funds thus accruing must either be applied to the prepayment of principal of any financing or refinancing or be retained by such entity as a reserve fund to be used exclusively for future debt service requirements pursuant to this subdivision (d)(1)(A)(iv)(*b*). The allocations provided under this subdivision (d)(1)(A)(iv)(*b*) must continue for a period of thirty (30) years from the date the first game is played in the stadium by the minor league baseball team, until such debt service is retired, until a sufficient reserve fund has been established for the retirement of such debt service, or until June 30, 2053, whichever occurs first. For purposes of administering this subdivision (d)(1)(A)(iv)(*b*), the entity that is responsible for retirement of the debt on the stadium shall, by July 31 of each year, report its debt amortization schedule, minor league baseball stadium fund balance, and reserve fund balance to the commissioner of revenue. Additionally, in the event that a sufficient reserve fund is established for the retirement of such debt service, the presiding officer of the governing body of the entity that is responsible for the retirement of the debt on the stadium shall certify the date of such event and provide notice to the commissioner of revenue within thirty (30) days following such event.

(v) For the purpose of this subsection (d), "municipality" means any metropolitan government, incorporated city or county located in this state.

(vi) Notwithstanding any provision of this subdivision (d)(1)(A) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be distributed to the municipality. The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(vii) Notwithstanding the allocations provided for in subsection (a), in a municipality with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census, with a motor sports facility less than one (1) mile in circumference, and only if the municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount must be apportioned and distributed to the municipality equal to the amount of state tax revenue derived from the sale of admissions to all events occurring at the motor sports facility and from all sales of food, drinks, merchandise, and parking, which includes parking of recreational vehicles and other vehicles, regardless of whether such vehicles

are used for overnight accommodations or connected to electric and water services, sold from a location on the premises of the motor sports facility in conjunction with an event occurring at the motor sports facility. The amount distributed to the municipality must be for the exclusive use of the agency formally designated by the municipality to govern the operations of the motor sports facility and must be utilized exclusively for capital and operation expenses associated with the motor sports facility.

(B) Any distribution to a municipality as provided for by subdivision (d)(1)(A)(i) is limited to a period of thirty (30) years, which must be concurrent with the time limitation established by subdivision (d)(2). Following the expiration of this thirty-year period, all amounts that would have otherwise been distributed to the municipality or retained in lieu of distribution must be allocated as provided elsewhere without regard to subdivision (d)(1)(A)(i). Notwithstanding this section or any other law to the contrary, the apportionment and distribution of state tax revenue provided in subdivision (d)(1)(A)(i) as it pertains to National Hockey League franchises and the apportionment and distribution of state tax revenue provided in subdivision (d)(1)(A)(iii) shall continue until June 30, 2049.

(C) Notwithstanding the allocations provided in subsection (a), if there exists in a municipality in this state a sports authority organized pursuant to title 7, chapter 67, and if a new motor sports facility locates in that municipality, and if the sports authority issues bonds or notes and uses the proceeds to assist with the development of such motor sports facility, including, but not limited to, the construction of roads, streets, highways, curbs, bridges, flood control facilities, and utility services, such as water, sanitary sewer, electricity, gas and natural gas, and telecommunications for such facility, then at such time as the new motor sports facility begins operating, and for a period of thirty (30) years thereafter, an amount shall be apportioned and distributed to the sports authority of that municipality, or other entity that is responsible for the retirement of the debt evidenced by such bonds or notes, equal to the amount of state and local tax revenue derived from the sale of admissions to events at such facility, and also the sale of food and drinks sold on the premises of such facility used in conjunction with those events, parking charges, and related services, as well as the sale at such facility of souvenirs, memorabilia, and other goods and products associated with the operation of the facility. Such amount distributed shall be for the exclusive use of the sports authority, or comparable municipal agency, formally designated by the municipality in accordance with title 7, chapter 67. Notwithstanding this section, a sports authority and the municipality in which it is located may enter into an agreement under which all or any portion of the local tax revenue may be paid to the municipality for its exclusive use. For the purposes of this subdivision (d)(1)(C), "municipality" means any incorporated city or county located in this state. This subdivision (d)(1)(C) shall only be applicable if the cost of the acquisition of real property for such new motor sports facility, together with the costs of constructing and equipping the

facility, exceeds forty million dollars ($40,000,000), incurred after January 1, 1999. The state portion of the tax revenue shall be distributed to the sports authority only if, at the date of such distribution, the sports authority has outstanding indebtedness due on such bonds or notes described in this subdivision (d)(1)(C).

(D) Notwithstanding the allocations provided for in subsection (a), if a baseball and softball complex, comprised of at least seventeen (17) baseball and softball fields and designed to host both local league play, as well as regional and national youth baseball and softball tournaments, is constructed adjacent to a stadium used by a franchise for a minor league affiliate of a major league baseball team, American or National League, playing at the Class AA level or higher, with respect to which an apportionment and distribution is made pursuant to subdivision (d)(1)(A), then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on such baseball and softball complex, equal to the amount of state and local tax revenue derived from the sale of admissions to events at the baseball and softball complex and from the sale of food and drink and other authorized goods or products sold on the premises of the baseball and softball complex in conjunction with those events. This apportionment and distribution shall continue until the debt on the baseball and softball complex is retired. Such apportionment and distribution shall continue in the event the adjacent stadium ceases to house a minor league affiliate of a major league baseball team playing at the Class AA level or higher. Notwithstanding any provision of this subdivision (d)(1)(D) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subdivision (d)(1)(D). All such revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992, and chapter 856 of the Public Acts of 2002, respectively.

(E)(i) Notwithstanding the allocations provided for in subsection (a), if a new convention center that qualifies as a public use facility under title 7, chapter 88 is constructed in a county having a metropolitan form of government with a population of more than five hundred thousand (500,000), according to the 2000 federal census or any subsequent federal census, then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of admission, parking, food, drink and any other things or services subject to tax under this chapter, if such sales occur on the premises of the convention center or any related ancillary facilities, including, but not limited to, any tourism, theatre, retail business or commercial office space facilities or parking facilities. The apportionment and distribution shall begin at the time that the convention center begins operations and shall continue for thirty (30) years, or until the debt on the convention

center is retired, whichever is sooner.

(ii) In addition to the distribution provided in subdivision (d)(1)(E)(i), if either one (1) or two (2) new hotels are constructed in connection with the construction of the convention center, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotels. The apportionment and distribution shall begin at the time that the convention center begins operations and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner. To be entitled to receive the distribution of state and local tax revenue under this subdivision (d)(1)(E)(ii), the entity responsible for the retirement of the debt on the convention center must first file with the department of finance and administration an application seeking certification that the construction of the hotels is directly related to the construction of the convention center. The department of finance and administration shall review the application to confirm whether the hotels meet the requirements of this subdivision (d)(1)(E)(ii). The department of finance and administration shall report its determination to the department of revenue, which shall administer this subdivision (d)(1)(E)(ii) accordingly.

(iii) In addition to the distribution provided in subdivisions (d)(1)(E)(i) and (ii), if a hotel within the footprint of the convention center, as determined by the commissioner of revenue and the commissioner of economic and community development, undertakes a significant capital improvement program in connection with the construction of the convention center, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the convention center and ancillary facilities equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink, and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotel. The apportionment and distribution shall begin at the time that the significant capital improvement program is substantially completed and shall continue for thirty (30) years, or until the debt on the convention center is retired, whichever is sooner. To be entitled to receive the distribution of state and local tax revenue under this subdivision (d)(1)(E)(iii), the entity responsible for the retirement of the debt on the convention center must first receive certification from the commissioner of revenue and the commissioner of economic and community development, with the approval of the commissioner of finance and administration, that the capital improvement program is directly related to the construction of the convention center.

(iv) Notwithstanding any provision of this subdivision (d)(1)(E) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to the

chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subdivision (d)(1)(E). All such revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992, and chapter 856 of the Public Acts of 2002, respectively.

(2) Any bonds issued relative to the construction of a sports facility for a sports franchise listed in subdivision (d)(1)(A)(i) shall not be issued for a term longer than thirty (30) years from the date the first game is played by the professional sports franchise in a municipality, as defined in subdivision (d)(1).

(e) Notwithstanding the provisions of this section to the contrary, revenue derived from taxes imposed by this chapter, except revenue allocated pursuant to subdivision (c)(2), shall be earmarked and allocated in accordance with title 7, chapter 88.

(f) Notwithstanding subsections (a)-(e), the state tax on fees or charges for subscription to, access to, or use of television programming or television services provided by a video programming service provider offered for public consumption on charges or fees in excess of fifteen dollars ($15.00) but less than twenty-seven dollars and fifty cents ($27.50) per month, shall be for state purposes only and shall be earmarked and allocated specifically and exclusively to the general fund. Any amounts derived from the sales tax on fees or charges for subscription to, access to, or use of television programming or television services provided by a video programming service provider offered for public consumption, in excess of twenty-seven dollars and fifty cents ($27.50) shall be taxed at the state rate of the tax levied on the sale of tangible personal property at retail by § 67-6-202 in accordance with part 2 of this chapter, as well as pursuant to the local option revenue act in part 7 of this chapter, and be distributed in accordance with this section. Counties and incorporated municipalities shall use funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712.

(g) **[Contingent on funding. See the Compiler's Notes.]** (1) Notwithstanding the allocations provided for in subsection (a), there shall be apportioned and distributed to any county in which there is a state park containing approximately six thousand five hundred (6,500) acres, of which approximately four thousand (4,000) acres are an impounded reservoir, a portion of which is owned by the Tennessee Valley authority, over which an easement has been given to the state and the state has leased or otherwise conveyed its rights to the property to such county for development, an amount equal to the amount of state and local sales taxes derived from sales occurring within such property. Such amount distributed to the county shall be exclusively for retirement of the indebtedness incurred by such county for development of such property, to the same extent that such county may pledge any revenues of the county.

(2)(A) Notwithstanding any provision of this subsection (g) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to chapter 529, § 9 of

the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subsection (g). All such revenue shall continue to be allocated as provided in chapter 529, § 9 of the Public Acts of 1992, and chapter 856, § 4 of the Public Acts of 2002.

(B) Notwithstanding any provision of this subsection (g) to the contrary, prior to any annual distribution pursuant to subdivision (g)(1), an amount equal to the state sales and use taxes collected within such area in fiscal year 2004-2005 shall be deposited in the treasury and allocated as otherwise provided by law.

(3) Prior to the issuance of any bonds for development of property subject to this subsection (g), the county legislative body shall submit its plan for development to the executive committee of the state building commission for such committee's review and recommendation to the state building commission.

(h)(1) Notwithstanding the provisions of this section to the contrary, revenue derived from state taxes imposed by this chapter shall be earmarked and allocated in accordance with the Courthouse Square Revitalization Pilot Project Act of 2005, compiled in title 6, chapter 59.

(2) Notwithstanding a repeal of title 6, chapter 59, any municipality receiving an allocation of state sales tax revenue on June 1, 2015, pursuant to title 6, chapter 59, shall continue to receive the allocation of the revenue until June 30, 2028. The allocation shall equal the amount of revenue derived from the state tax imposed by this chapter on the sale or use of goods, products and services within the courthouse square revitalization zone. For purposes of this subdivision (h)(2), "courthouse square revitalization zone" has the same meaning provided in [former] § 6-59-102 and shall consist of the area that is included within the revitalization zone on June 1, 2015.

(3) No portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes, pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%), pursuant to chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992, and chapter 856 of the Public Acts of 2002.

(i)(1) Notwithstanding the allocations provided for in subsection (a), if a new museum dedicated to coal mining is constructed in a county containing a spallation neutron source facility, then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt on the museum equal to the amount of state and local tax revenue derived under this chapter from the sale of admission, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the museum. The apportionment and distribution shall begin at the time that the museum begins operations and shall continue for thirty (30) years, or until the debt on the museum is retired, whichever is

sooner.

(2)(A) In addition to the distribution provided in subdivision (i)(1), if a new hotel is constructed in connection with the construction of the museum and the hotel is located within one (1) mile of the museum's entrance, then an amount shall also be apportioned and distributed to the entity that is responsible for the retirement of the debt on the museum equal to the amount of state and local tax revenue derived under this chapter from the sale of lodging, parking, food, drink and any other things or services subject to tax under this chapter, if the sales occur on the premises of the hotel. The apportionment and distribution shall begin at the time the museum begins operations and shall continue for thirty (30) years, or until the debt on the museum is retired, whichever is sooner.

(B) To be entitled to receive the distribution of state and local tax revenue under subdivision (i)(2)(A), the entity responsible for the retirement of the debt on the museum must first file with the department of finance and administration an application seeking certification that the construction of the hotel is directly related to the construction of the museum. The department of finance and administration shall review the application to confirm whether the hotel meets the requirements of this subdivision (i)(2). The department of finance and administration shall report its determination to the department of revenue, which shall administer this subdivision (i)(2) accordingly.

(3) Notwithstanding any provision of this subsection (i) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to the chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002, shall be apportioned and distributed pursuant to this subsection (i). The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992, and chapter 856 of the Public Acts of 2002, respectively.

(j) Notwithstanding this section and any other law to the contrary, there is established a separate account in the local government fund to be known as the county revenue partnership fund. The apportionment of revenues to the fund and distributions from the fund shall be subject to the following provisions:

(1) Any apportionment of revenues to the county revenue partnership fund shall be allocated only from the revenues apportioned to the state general fund pursuant to subdivision (a)(1);

(2) Apportionment of revenues to the county revenue partnership fund may be made in any year pursuant to an allocation made in a specific dollar amount in the general appropriations act, and no apportionment shall otherwise be made to the fund; provided, however, that in fiscal years 2007-2008 and 2008-2009, no revenue shall be apportioned to the fund;

(3) The apportionment to and distributions from the county revenue partnership fund in any fiscal year shall not exceed the amount distributed to municipalities from the state sales tax pursuant to subdivision (a)(3)(A) in the previous fiscal year;

(4) In any fiscal year in which revenues are apportioned to the county revenue partnership fund, the revenue shall be allocated and distributed to

all counties and metropolitan governments in this state monthly by the commissioner of finance and administration, in proportion as the population of each county or metropolitan government bears to the aggregate population of the state, according to the latest federal census or other censuses authorized by law;

(5) The county legislative body shall, on an annual basis, direct the trustee with regard to allocating and depositing the revenue from this fund among the various funds of the county budget; and

(6) In the state budget document, the county revenue partnership fund shall be listed in the report of revenue sources and basis of apportionment, and the amount apportioned to the fund shall be stated in the distribution of revenues by fund for each year in the comparison statement of state revenues, regardless of whether any revenue is apportioned to the fund for a given fiscal year.

(k)(1) Notwithstanding the allocations provided for in subsection (a), if there exists a performing arts center that consists of four (4) or more auditoriums, has a total seating capacity of five thousand four hundred (5,400) or more, and is operated by an organization that has received a determination of exemption from the internal revenue service under Internal Revenue Code § 501(c)(3) (26 U.S.C. § 501(c)(3)), and if the performing arts center is located in facilities owned by the state or a political subdivision of the state, then an amount shall be apportioned and distributed to the entity that is responsible for operation and management of the performing arts center. A performing arts center may consist of two (2) or more performance venues with auditoriums located in two (2) or more buildings that are contiguous or in close proximity and are owned by the state or a political subdivision of the state. The amount apportioned and distributed pursuant to this subsection (k) shall be equal to the amount of state tax revenue derived under this chapter from the sale of tickets for admission to events held at the performing arts center; provided, however, that the apportionment and distribution shall be used exclusively for maintenance and improvement of the facilities in which the performing arts center is located, which shall include, but not be limited to, capital improvements, additions and renovations to the facilities and debt service on funds borrowed to pay for the improvements, additions and renovations. Debt service shall include principal and interest payments on existing and future debt obligations, including repayment to the exempt organization operating the facilities of funds advanced or loaned by the organization that were used or are used to pay the costs, in whole or in part, of the improvements, additions and renovations to the facilities.

(2) Notwithstanding subdivision (k)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subsection (k). The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(*l*)(1) Notwithstanding the allocations in subsection (a), except as provided in subdivision (*l*)(2), state tax revenue collected from commercial breeders licensed under the Commercial Breeder Act, compiled in title 44, chapter 17, part 7 [expired], shall be allocated to the Commercial Breeder Act enforcement and recovery account.

(2) Notwithstanding subdivision (*l*)(1), no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be allocated to the Commercial Breeder Act enforcement and recovery account. The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(m)(1) Notwithstanding the allocations provided for in subsection (a), if a hotel or inn that is more than one hundred fifty (150) years old is owned by a municipality and operated by an organization that has received a determination of exemption from the internal revenue service under Internal Revenue Code § 501(c)(3) (26 U.S.C. § 501(c)(3)), then an amount shall be apportioned and distributed to the entity that is responsible for the retirement of the debt incurred in renovating the hotel or inn. The amount apportioned and distributed pursuant to this subsection (m) shall be equal to the amount of state tax revenue derived under this chapter from the sale of goods and services on the premises of the hotel or inn; provided, however, that the apportionment and distribution shall be used exclusively for the retirement of debt incurred prior to April 1, 2009, including any interest thereon, in renovating the hotel or inn and shall continue only until the debt is retired.

(2) Notwithstanding subdivision (m)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subsection (m). All such revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(n)(1) As used in this subsection (n), unless the context otherwise requires:

(A) "Best interests of the state" means a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that:

(i) The public improvements made within or adjacent to a mixed-use development are a result of the special allocation and distribution of state sales tax provided for in this subsection (n); and

(ii) The mixed-use development is a result of such public improvements;

(B) "Commercial development zone" means an area in which a mixed-use development is planned or located. To comprise a commercial devel-

opment zone, the area:

(i) Must be located entirely within an eligible county;

(ii) Shall not exceed one thousand two hundred (1,200) acres; and

(iii) Must be located adjacent to a federally designated interstate highway;

(C) "Eligible county" means any county in which:

(i) At least twenty-five percent (25%) of the county consists of federally-owned land;

(ii) At least thirty and three-fifths percent (30.6%) of the county's population, eighteen (18) years of age and younger, lives in poverty as determined by the United States census bureau, small area income and poverty estimates (SAIPE) program, or any comparable successor program, within the three-year period immediately preceding establishment of the commercial development zone; and

(iii) The federal highway administration has approved an interstate exit in close proximity to the area proposed for a commercial development zone, and such approval was based on the need to stimulate local economic development opportunities;

(D) "Mixed-use development" means an area, located entirely within an eligible county, containing not less than five hundred (500) acres nor more than one thousand two hundred (1,200) acres and includes, but is not limited to, property with commercial uses; and

(E) "Public improvements" means roads, streets, sidewalks, utility services, such as electricity, gas, water and sanitary sewer, and related services, parking facilities, parks, and all other necessary or desirable improvements to be used by the public in connection with a commercial development zone.

(2) Notwithstanding the allocations provided for in subsection (a), if an eligible county has good reason to anticipate that a private entity is willing to plan and develop a mixed-use development; and if the commissioner of revenue, with approval by the commissioner of economic and community development, determines that the special allocation of state sales tax, as authorized by this subsection (n), is in the best interests of the state, then the county legislative body may adopt a resolution designating a commercial development zone for such mixed-use development; provided, however, no county shall contain more than one (1) commercial development zone; and provided further, however, the county legislative body must adopt such resolution on or before June 30, 2011. If the county legislative body duly adopts such resolution, and if the county or an industrial development board, pursuant to subdivision (n)(3), issues bonds payable in whole or part from the tax revenues described herein and uses the proceeds to finance any development or public improvements constructed within or adjacent to the commercial development zone, then an amount shall be apportioned and distributed to such county for the retirement of debt evidenced by such bonds. The amount apportioned and distributed to the county pursuant to this subsection (n) shall equal the amount of state tax revenue derived under this chapter from sales of items and services subject to tax pursuant to this chapter, if the sales occur within the commercial development zone. The

apportionment and distribution of such revenue shall begin upon the receipt of a certificate of occupancy for the first retail business operating within the commercial development zone and shall continue for a period of thirty (30) years, or until the debt, including any refunding debt, relating to the commercial development zone is retired, whichever is sooner.

(3) An eligible county in which a commercial development zone is duly located is authorized to delegate to any industrial development corporation incorporated by the county or a municipality within the county the authority to issue revenue bonds to finance development or public improvements within or adjacent to a commercial development zone; provided, that the county shall enter into an agreement with the industrial development corporation in which the county shall agree to promptly pay to the industrial development corporation the tax revenues described in this subsection (n). Upon receipt, such tax revenues shall be held in trust by the county for the benefit of the industrial development corporation.

(4) Notwithstanding any provision of subdivision (n)(2) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subsection (n). The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(o)(1) Notwithstanding the allocations provided for in subsection (a), if there exists a zoo or aquarium that is accredited by the Association of Zoos and Aquariums and has received and currently holds a determination of exemption from the Internal Revenue Service under Internal Revenue Code § 501(c)(3) (26 U.S.C. § 501(c)(3)), then an amount shall be apportioned and distributed to the zoo or aquarium equal to the amount of state tax revenue derived under this chapter from the sale of tangible personal property or amusements on the premises of the zoo or aquarium; provided, however, that such apportionment and distribution shall be used exclusively for the operation of the zoo or aquarium, including, but not limited to, capital projects.

(2) Notwithstanding subdivision (o)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to this subsection (o). The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(p) Notwithstanding § 7-40-106 to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, chapter 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from

six percent (6%) to seven percent (7%) contained in Acts 2002, chapter 856, § 4, shall be distributed to the municipality. The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(q) Notwithstanding the allocations provided for in subsection (a) and § 67-6-710, all moneys received and identified by the commissioner as moneys paid by out-of-state dealers acting in compliance under this chapter with any rule filed with the secretary of state on or after October 1, 2016, and effective on or before January 1, 2017, to give effect to Chapter 789 of the Public Acts of 1988, shall be reported monthly by the commissioner and apportioned into special reserve accounts in the various funds that, pursuant to applicable statutes, share in the proceeds of sales tax collections. Interest earnings on the moneys collected shall be calculated by the division of accounts, department of finance and administration, and allocated monthly to the various fund reserve accounts. Such moneys shall remain in these reserve accounts and shall not revert at the end of any fiscal year; provided, however, such moneys shall be earmarked, allocated and become available for appropriation as otherwise provided in this chapter upon certification by the attorney general and reporter of the happening of any of the following:

(1) The final resolution of any contested case brought before the commissioner under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or suit challenging application of any rule filed with the secretary of state on or after October 1, 2016, and effective on or before January 1, 2017, to give effect to Chapter 789 of the Public Acts of 1988;

(2) The effective date of a federal law enacted by the United States Congress to regulate the various states' ability to require out-of-state dealers to collect the taxes imposed by this chapter, pursuant to its authority to regulate interstate commerce; or

(3) That no party has brought a contested case before the commissioner under the Uniform Administrative Procedures Act or a suit challenging application of any rule filed with the secretary of state on or after October 1, 2016, and effective on or before January 1, 2017, to give effect to Chapter 789 of the Public Acts of 1988; provided, however, that any certification under this subdivision (q)(3) shall not occur before June 30, 2018.

(r) **[Effective on January 1, 2019 and effective until July 1, 2023.]** (1) Notwithstanding the allocations provided for in subsection (a), fifty percent (50%) of the event revenue from the state taxes collected under this chapter for privileges exercised in an event venue during an event period that would otherwise be deposited in the general fund and not otherwise be earmarked for educational purposes shall be deposited in the event tourism fund established by § 67-6-105.

(2) One and one hundred twenty-five thousandths percent (1.125%) of funds deposited in the event tourism fund shall be retained by the department of finance and administration to be used for costs associated with administering the fund and this section. The department of finance and administration shall cause to be paid to the department of revenue an amount to offset the department's costs in administering this section.

(3) As used in this subsection (r):

(A) "Event period" has the same meaning as defined in § 67-6-105;

(B) "Event revenue" has the same meaning as defined in § 67-6-105; and

(C) "Event venue" has the same meaning as defined in § 67-6-105.

(s)(1) Notwithstanding the allocations provided for in subsection (a), if a new event center is to be constructed for use, in part, by a state university with an independent board of trustees in a county in which there is a population in excess of one hundred fifty thousand (150,000) in accordance with the 2010 federal census or the most recent subsequent census, and in which there is located, in whole or in part, a military base with enlisted active duty personnel in excess of twenty thousand (20,000) as of December 31, 2018, then an amount shall be apportioned and distributed to a public entity designated by the county that is responsible for the retirement of all or a portion of the original debt on such event center equal to the amount of any incremental state and local sales and use tax revenue, including any portion of local sales taxes that otherwise would be allocated for school purposes, from the sale of food and drink and other authorized goods or products sold on the premises of the event center, ticket sales, parking charges, and related services on the premises of the event center. Any such incremental tax revenues shall be applied to the original debt service related to the event center, and shall not be applied to any debt issued for the purposes of refinancing the original debt. This apportionment and distribution shall continue until the date on which the original debt relating to the event center is retired, or until the expiration of thirty (30) years, whichever is sooner. For purposes of this subdivision (s)(1), an event center shall include the facility in which events are held and shall also include any and all ancillary facilities such as parking facilities adjacent to the facility in which events are held.

(2) Notwithstanding subdivision (s)(1) to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to chapter 529, § 9 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter 856, § 4 of the Public Acts of 2002 shall be apportioned and distributed pursuant to subdivision (s)(1). The revenue shall continue to be allocated as provided in chapter 529 of the Public Acts of 1992 and chapter 856 of the Public Acts of 2002, respectively.

(t) Notwithstanding § 7-41-106 to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Acts 1992, chapter 529, § 9, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Acts 2002, chapter 856, § 4, shall be distributed to the municipality. The revenue must be allocated as provided in Acts 1992, chapter 529 and Acts 2002, chapter 856, respectively.

History.

Acts 1947, ch. 3, § 15; 1947, ch. 149, § 1; 1949, ch. 17, § 1; 1949, ch. 248, § 1; 1949, ch. 261, § 1; C. Supp. 1950, § 1248.87 (Williams, §§ 1328.37, 1328.37a); Acts 1951, ch. 241, § 1; 1953, ch. 50, § 1; 1953, ch. 195, § 1; modified; Acts 1955, ch. 51, § 13; 1955, ch. 190, § 1; 1957, ch. 130, § 1; 1957, ch. 136, § 1; 1957, ch.

363, § 1; impl. am. Acts 1959, ch. 9, §§ 3, 14; Acts 1959, ch. 67, § 1; 1959, ch. 276, § 1; impl. am. Acts 1961, ch. 97, § 3; 1961, ch. 187, § 1; 1963, ch. 276, § 1; 1965, ch. 281, § 1; 1967, ch. 315, § 1; 1969, ch. 172, § 1; 1970, ch. 430, § 1; 1971, ch. 117, § 5; 1972, ch. 542, §§ 1-3, 15; 1972, ch. 589, § 1; 1973, ch. 232, § 1; 1974, ch. 494, § 1; 1974, ch. 516, § 2; 1974, ch. 593, § 1; 1975, ch. 197, § 1; 1976, ch. 466, § 4; 1977, ch. 6, §§ 1, 2; 1977, ch. 41, § 1; 1979, ch. 114, § 1; 1979, ch. 364, § 1; 1983, ch. 143, § 1; T.C.A. (orig. ed.), § 67-3047; Acts 1984 (Ex. Sess.), ch. 8, § 7; 1984, ch. 708, § 2; 1984, ch. 832, § 15; 1984, ch. 914, § 1; 1984, ch. 956, § 1; 1985, ch. 356, § 1; 1986, ch. 727, § 1; 1986, ch. 931, § 2; 1987, ch. 85, § 1; 1987, ch. 391, § 1; 1987, ch. 440, § 1; 1988, ch. 1025, §§ 1, 2; 1991, ch. 463, § 1; 1992, ch. 529, §§ 9, 14; 1992, ch. 1015, §§ 2-4; 1993, ch. 519, §§ 2, 5; 1994, ch. 968, § 1; 1994, ch. 1006, §§ 1, 4; 1995, ch. 135, § 2; 1995, ch. 237, § 1; 1996, ch. 596, §§ 2, 3; 1997, ch. 206, § 1; 1997, ch. 382, § 2; 1997, ch. 415, §§ 1, 2; 1998, ch. 920, §§ 1, 2; 1998, ch. 1055, § 11; 1999, ch. 18, § 1; 1999, ch. 423, § 6; 2000, ch. 983, § 13; 2002, ch. 856, § 4b; 2003, ch. 176, § 1; 2003, ch. 355, §§ 43, 44; 2003, ch. 357, §§ 17, 18; 2004, ch. 592, § 8; 2004, ch. 959, §§ 5, 6, 68; 2005, ch. 212, § 2; 2005, ch. 311, §§ 1, 2; 2005, ch. 441, § 1; 2005, ch. 448, § 8; 2005, ch. 499, § 47; 2005, ch. 500, §§ 6, 7; 2005, ch. 505, § 1; 2006, ch. 781, § 1; 2006, ch. 892, § 1; 2006, ch. 989, §§ 11, 12; 2006, ch. 1019, § 54; 2007, ch. 520, § 1; 2007, ch. 600, § 2; 2007, ch. 602, §§ 43, 48, 51, 69, 187; 2008, ch. 1057, § 1; 2008, ch. 1106, §§ 14, 16, 17; 2009, ch. 474, §§ 9, 10; 2009, ch. 530, §§ 36, 58, 59, 62; 2009, ch. 609, § 1; 2010, ch. 1033, § 1; 2010, ch. 1134, §§ 42, 57; 2011, ch. 72, §§ 1, 2; 2011, ch. 350, § 3; 2011, ch. 407, § 1; 2011, ch. 420, § 14; 2012, ch. 849, § 1; 2012, ch. 1026, §§ 4, 5; 2017, ch. 390, § 1; 2017, ch. 449, § 1; 2017, ch. 461, § 2; 2018, ch. 959, § 3; 2018, ch. 1011, § 4; 2019, ch. 382, § 1; 2019, ch. 498, § 14; 2021, ch. 401, §§ 1-4; 2021, ch. 422, § 1; 2021, ch. 481, § 1; 2021, ch. 558, § 2; 2021, ch. 591, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 135, 136; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment by ch. 382 added (s).

The 2019 amendment by ch. 498 added (t).

The 2021 amendment by ch. 401 deleted "football (National Football League or Canadian Football League, or its successors or assigns)," following "baseball (American or National League)," in (d)(1)(A)(i); added present (d)(1)(A)(ii); redesignated former (d)(1)(A)(ii)—(d)(1)(A)(v) as (d)(1)(A)(iii)—(vi); in (d)(1)(B), substituted "must" for "shall" throughout, deleted "In lieu of distribution to any municipality, amounts derived from a National Football League franchise shall be earmarked and allocated specifically and exclusively to the general fund. In all cases," from the beginning of the paragraph, substituted "subdivision (d)(1)(A)(i) is" for "this subsection (d) shall be" and substituted "subdivision (d)(1)(A)(i)" for "this subsection (d)"; and inserted "for a sports franchise listed in subdivision (d)(1)(A)(i)" in (d)(2).

The 2021 amendment by ch. 422 added (d)(1)(A)(iv)(*b*).

The 2021 amendment by ch. 481 rewrote (a)(3)(B)(v)(*b*), which read: "Subdivision (a)(3)(B)(v)(*a*) shall not apply in the 2017-2018 fiscal year through the 2020-2021 fiscal year. This subdivision (a)(3)(B)(v)(*b*) is repealed on July 1, 2021."

The 2021 amendment by ch. 558 added (d)(1)(A)(vii).

The 2021 amendment by ch. 591 added the last sentence of (d)(1)(B).

Effective Dates.

Acts 2019, ch. 382, § 2. May 10, 2019.
Acts 2019, ch. 498 § 15. July 1, 2019.
Acts 2021, ch. 401, § 8. July 1, 2021.
Acts 2021, ch. 422, § 3. July 1, 2021.
Acts 2021, ch. 481, § 2. July 1, 2021.
Acts 2021, ch. 558, § 4. July 1, 2021.
Acts 2021, ch. 591, § 2. May 27, 2021.

67-6-104. Apportionment of sales and use tax revenue to commercial development districts in rural, economically distressed counties.

(a) It is the intent of this section to address rural, economically distressed counties experiencing persistent high unemployment and traditionally low levels of family income by apportioning and distributing sales and use tax revenue to commercial development districts in those counties.

(b) For purposes of this section:

(1) "Base tax revenues" means the revenues generated, if any, from the collection of state and local sales and use taxes from all businesses within

the certified commercial development district as of the end of the fiscal year of this state immediately prior to the year in which the county, municipality, or industrial development corporation is entitled to receive an allocation of tax revenue pursuant to this section;

(2) "Commercial development district" means one (1) or more parcels of real property located within an eligible county, in which it is reasonably anticipated and projected that state and local sales and use taxes will increase, or be newly generated in the case of a district in which no base tax revenues have been previously generated, as a result of the development of the real property by an amount in excess of the increases in the collection of state and local sales and use tax revenues reasonably projected to occur within that area without regard to the development of the real property. Prior to December 31, 2014, "commercial development district" shall include the development of an area comprised of property acquired from the state by an eligible county or an industrial development corporation established by such eligible county, which property was used by the state as a correctional facility. On and after December 31, 2014, "commercial development district" may include the development of an area comprised of property acquired from the state by an eligible county or an industrial development corporation established in such eligible county, which property was used by the state as a correctional facility. Each commercial development district shall be certified by the commissioner of finance and administration;

(3) "Eligible county" means:

(A) Prior to December 31, 2014, a county that meets one (1) or more of the following criteria as of December 31, 2014:

(i) Has a per capita income of eighty percent (80%) or less of the national average;

(ii) Has an unemployment rate that is, for the most recent twenty-four-month period for which data are available, at least one percent (1%) greater than the national average unemployment rate, or, for the most recent twelve-month period for which data are available, at least two percent (2%) greater than the state average unemployment rate;

(iii) Has experienced, or is about to experience, a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, as determined by the commissioner of finance and administration, the commissioner of economic and community development, and the commissioner of revenue; or

(iv) Has an area comprised of property acquired from the state by an eligible county or an industrial development corporation established in such eligible county, which property was used by the state as a correctional facility;

(B) On and after December 31, 2014, a distressed rural county that will be identified using a consistent methodology based on a set of broadly available measures of economic well-being that could include county unemployment rate, rate of job growth, personal income per capita, property tax base per capita, percent high school graduates, and percent below poverty. Using this consistent methodology, the commissioner of

finance and administration, the commissioner of economic and community development, and the commissioner of revenue shall determine which counties are eligible counties and shall publish a list of the eligible counties meeting the criteria in this subdivision (b)(3)(B) by July 1 of each year; or

(C) On or after January 1, 2021, a county that borders at least three (3) distressed rural counties, as identified pursuant to subdivision (b)(3)(B), in at least three (3) fiscal years since fiscal year 2016-2017, and whose governing body, or the governing body of a municipality within the county, passed a resolution or other official action prior to January 1, 2021, that seeks to establish or certify a commercial development district within the county or municipality and receive an allocation of sales and use tax revenues under this section;

(4) "Proprietary information" means commercial or financial information that is used either directly or indirectly in the business of any person submitting information to the commissioner under this section, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(5) "Trade secrets" means any materials or processes used directly or indirectly in the business of a person or entity submitting information or documentation related to such materials or processes to the commissioner under this section, and that give the person or entity an advantage or an opportunity to obtain an advantage over competitors who do not know or use them.

(c) In order to receive an allocation of sales and use tax revenues under this section, an eligible county or a municipality located within the eligible county, or an industrial development corporation established by such eligible county or municipality, must submit a completed application to the commissioner of finance and administration together with an application fee in an amount established by the department of finance and administration. The application shall be developed by the department of finance and administration.

(d) The application shall include, but not be limited to, the following information:

(1) A list of tax parcels composing the proposed commercial development district, including owners and parcel numbers, from which the sales and use tax revenues will be generated;

(2) A map, survey or drawing clearly identifying the boundaries of the proposed commercial development district area;

(3) Written confirmation of the current zoning of the proposed commercial development district;

(4) A description of the financing for the project to be located within the proposed commercial development district;

(5) The number of jobs that the applicant estimates will be created in the proposed commercial development district and the wages, salaries and other compensation that will be paid to those persons holding the jobs;

(6) The estimated development and construction costs of the project to be located in the proposed commercial development district;

(7) A certification from the county that it complied with the criteria

required to be eligible;

(8) A resolution or other official action from the governing body of the eligible county requesting consideration of the application and approval of the proposed commercial development district and acknowledging that an increment of sales and use taxes from future activities within the commercial development district will be applied as payments on the indebtedness financing the commercial development district;

(9) If the commercial development district is located in a municipality within an eligible county, a resolution or other official action by the governing body of the municipality requesting consideration of the application and approval of the proposed commercial development district and acknowledging that an increment of sales and use taxes from future activities within the commercial development district will be applied as payments on the indebtedness financing the commercial development district;

(10) An affidavit, on a form provided by the department of finance and administration, signed by the applicant certifying that the proposed commercial development district cannot proceed without the availability of financing under this section along with supporting documentation establishing the need for and the amount of the financing; and

(11) Such financial and other information as may be necessary for the commissioner of finance and administration to evaluate the application.

(e) No action shall be taken with respect to an application until the commissioner of finance and administration determines that the commissioner has received all information that may be relevant or necessary in determining the qualifications of the applicant and the proposed commercial development district.

(f) Each commercial development district shall be certified by the commissioner of finance and administration. Once the commissioner of finance and administration has received all of the information required by subsection (d), the commissioner may certify, in the commissioner's discretion, the proposed commercial development district as a commercial development district. Each commercial development district shall include at least five million dollars ($5,000,000) in planned capital improvements. Prior to certifying the commercial development district, the commissioner must determine that the commercial development district is not economically feasible without the tax revenue allocation contemplated in this section. Notwithstanding this section to the contrary, no tax revenue allocation shall be allowed unless the commissioners of finance and administration, revenue, and economic and community development determine, in their sole discretion, that the tax revenue allocation is in the best interest of the state. For purposes of this subsection (f), "best interest of the state" means a determination by the commissioners of finance and administration, revenue, and economic and community development that the commercial development district is a result of the tax revenue allocation provided in this section and that the economic benefits to this state resulting from the commercial development district outweigh the anticipated amount of the tax revenue allocation. In evaluating the information submitted with the application the commissioner may consider normal underwriting criteria such

as debt capacity, ability to repay, equity and other capital at risk for the project, and the proposed terms of the contemplated indebtedness.

(g)(1) Notwithstanding the allocations provided for in § 67-6-103(a), if real property located in an eligible county is acquired and developed as a commercial development district, and is certified by the commissioner of finance and administration as a commercial development district, then an amount shall be apportioned and distributed to the county, the municipality, or the industrial development corporation equal to the amount of state sales tax revenue derived from five and one-half percent (5.5%) of the tax rate imposed pursuant to § 67-6-202 on all sales in the commercial development district and the amount of local sales tax revenue not dedicated for school purposes pursuant to § 67-6-712(a)(1) derived from all sales in the commercial development district in excess of base tax revenues; provided, that an apportionment and distribution of such amount is authorized under this section for any commercial development district in which no sales and use taxes have been generated for at least five (5) years prior to the apportionment and distribution. Such amount distributed shall be for the exclusive use of the county, municipality or industrial development corporation and shall be used solely for the purpose of paying the indebtedness, principal and interest, and closing costs incurred by the county, municipality or industrial development corporation in financing the commercial development district. For eligible counties as defined in subdivision (b)(3)(A), the period for such distributions shall be twenty (20) years. For eligible counties as defined in subdivision (b)(3)(B) or (b)(3)(C), the commissioner of finance and administration shall determine the period in which distributions will be necessary to provide the financing hereunder, and the period for such distributions shall not exceed twenty (20) years. The distributions shall cease upon the expiration of the applicable distribution period or upon satisfaction of the financing of the commercial development district, whichever occurs first. Following the expiration of the distribution period, all amounts that would have otherwise been distributed to the county, the municipality, or the industrial development corporation shall be allocated as provided elsewhere without regard to this section.

(2) Notwithstanding any provision of this section to the contrary, no portion of the revenue derived from the increase in the rate of sales and use tax allocated to educational purposes pursuant to Section 9, Chapter 529 of the Public Acts of 1992, and no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in Section 4, Chapter 856 of the Public Acts of 2002, shall be distributed to the eligible county, the municipality or the industrial development corporation for the financing contemplated in this section. The revenue shall continue to be allocated as provided in Chapter 529 of the Public Acts of 1992, and Chapter 856 of the Public Acts of 2002, respectively.

(3) If, at the close of any fiscal year, the revenue from the tax is not sufficient to meet the total debt service of the eligible county, the municipality, or the industrial development corporation for indebtedness incurred with respect to the commercial development district, the balance, if any, of the debt service not paid by revenue from the tax at the end of the fiscal year

shall be accumulated in a separate deficit account. If the revenue from the tax in any fiscal year exceeds the total of the debt service requirements of the commercial development district for that year, the surplus revenue thus accruing shall be retained by the eligible county, the municipality, or the industrial development corporation as a sinking fund for any future debt service requirements of the commercial development district or, alternatively, to reduce the then outstanding balance of the indebtedness.

(h) The apportionment and distribution of state sales and use taxes to the county, municipality, or industrial development corporation, as provided in this section shall commence at the beginning of the fiscal year after the certification of the commercial development district. The apportionment and payment shall be made by the department of revenue to the county, municipality or industrial development corporation within ninety (90) days of the end of each fiscal year for which the county, municipality or industrial development corporation is entitled to receive an allocation and payment pursuant to this chapter.

(i) The fact that an eligible county filed an application with the commissioner of finance and administration, whether an application was approved, the number of jobs created by a commercial development district, and the wages, salaries and other compensation that will be paid to the persons holding those jobs shall be available for public inspection pursuant to title 10, chapter 7. Any financial information, including, but not limited to, proprietary information and trade secrets contained in an application, or submitted with any accompanying documents or information filed with the application pursuant to this section, shall be confidential and shall not be open to the public for inspection, notwithstanding the public records provisions of title 10, chapter 7. Such financial information, proprietary information and trade secrets shall not be disclosed to any person, except that the commissioner of finance and administration is authorized to make the following disclosures:

(1) Within the department of finance and administration, the department of revenue, and the department of economic and community development in the course of their official duties; and

(2) To the comptroller of the treasury or the comptroller's designee for the purpose of an audit of the department of finance and administration, the department of revenue, or the department of economic and community development.

(j) In addition to other powers and duties prescribed by law, the commissioner of finance and administration shall monitor the financing of commercial development districts pursuant to this section, but the transfer of sales and use tax revenues to pay indebtedness shall be vested with the eligible county, the municipality within the eligible county, or the industrial development corporation established by an eligible county or the municipality. The commissioner shall report annually to the finance, ways and means committees of the senate and the house of representatives, and the state and local government committee of the senate and the state government committee of the house of representatives, regarding each allocation of tax revenues pursuant to this section.

(k) The commissioner of finance and administration is authorized to require an eligible county with a commercial development district to file a report with

the department of finance and administration. A report filed by an eligible county may include, but is not limited to, an analysis detailing the progress of the commercial development district, the number of jobs generated by the commercial development district, the wages, salaries and other compensation paid to those holding the jobs, and such additional information as requested by the commissioner of finance and administration.

(*l*) The department of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this section. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(m) The tax revenue allocation available pursuant to this section applies to eligible counties or municipalities located in such eligible counties, or industrial development corporations established by such eligible counties or municipalities, that:

(1)(A) In the case of property located in eligible counties as defined in subdivision (b)(3)(A), have filed an application with the commissioner of finance and administration prior to December 31, 2014;

(B) In the case of property located in eligible counties as defined in subdivision (b)(3)(B), have filed an application with the commissioner of finance and administration on or after December 31, 2014, and prior to December 31, 2020; or

(C) In the case of property located in eligible counties as defined in subdivision (b)(3)(C), have filed an application with the commissioner of finance and administration on or after January 1, 2021, and no later than December 31, 2026; and

(2) Have received the approval of a commercial development district from the commissioner of finance and administration on or before June 30, 2021.

History.

Acts 2014, ch. 985, § 1; 2018, ch. 896, §§ 1, 2; 2020, ch. 809, §§ 1-4; 2021, ch. 561, § 1.

Amendments.

The 2020 amendment added (b)(3)(C); substituted the present fourth through sixth sentences of subsection (f) for the former fourth sentence, which read: "Prior to certifying the commercial development district, the commissioner must determine that the commercial development district is not economically feasible without the tax revenue allocation contemplated in this section."; substituted "For eligible counties as defined in subdivision (b)(3)(B) or subdivision (b)(3)(C)" for "For eligible counties as defined in subdivision (b)(3)(B)" in (g)(1); and added (m)(1)(C).

The 2021 amendment rewrote (b)(3)(C), which read: "(C) On or after January 1, 2021, a county that borders at least three (3) distressed rural counties identified pursuant to subdivision (b)(3)(B);".

Effective Dates.

Acts 2020, ch. 809, § 5. July 15, 2020.

Acts 2021, ch. 561, § 2. May 26, 2021.

67-6-105. Event Tourism Act. [Effective until July 1, 2023.]

(a) This section shall be known and may be cited as the "Event Tourism Act."

(b) As used in this section:

(1) "Department" means the department of finance and administration;

(2) "Endorsing local authority" means a county or municipality that contains a site suitable for hosting an event;

(3) "Event":

(A) Means an event:

(i) Organized by a site selection organization or a sanctioning body;

(ii) For which the site is determined through a competitive selection process that includes consideration of one (1) or more sites that are not located in this state; or

(iii) That is a new or non-annual event not exceeding two (2) years; and

(B) Includes any activities related to or associated with an event;

(4) "Event period" means a period of time in which the department determines there is a reasonable likelihood of measurable economic impact directly attributable to the preparation for and presentation of the event;

(5) "Event revenue" means the revenue generated from collection of state sales and use taxes, pursuant to this chapter, and from the privilege tax imposed on the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-301(c), from all businesses at an event venue for the event period;

(6) "Event venue" means the facility or facilities where an event will take place;

(7) "Event venue host" means a person, corporation, limited liability company, association, governmental entity, or other entity that owns or operates a facility suitable for hosting an event that enters into an agreement with a local organizing committee to host an event at the facility;

(8) "Fund" means the event tourism fund established by this section;

(9) "Local organizing committee" means a nonprofit corporation that:

(A)(i) Has been authorized to pursue an application to a site selection organization or a sanctioning body for selection as the site of an event by an endorsing local authority or multiple local endorsing authorities acting collectively;

(ii) Has executed an agreement with a site selection organization or a sanctioning body regarding a bid to host an event with the authorization of an endorsing local authority or multiple endorsing local authorities acting collectively; or

(iii) Has created a new event or secured a non-guaranteed event with the authorization of an endorsing local authority or multiple endorsing local authorities acting collectively; and

(B) Is governed by a board of at least three (3) members, of whom:

(i) One (1) or more is a representative of a business, which may be for-profit or not-for-profit, that is qualified to do business in the state;

(ii) One (1) or more is a local elected official; and

(iii) One (1) or more is a representative from a nonprofit entity that promotes tourism in the local area, such as a convention and visitor's bureau, chamber of commerce, or destination marketing organization;

(10) "Qualified expense":

(A) Means any expense of a local organizing committee, endorsing local authority, or event venue host directly related to the event and approved by the department;

(B) Includes the following, if approved by the department:

(i) Reasonable labor and equipment costs directly related to the event beyond the scope of normal employment;

(ii) Reasonable costs related to improvements or renovations to

existing facilities in preparation for the event; and

(iii) Reasonable costs related to acquisition or construction of new facilities for the event; and

(C) Does not include usual and customary maintenance of a facility; and

(11) "State building commission" means the state building commission created by § 4-15-101.

(c)(1) There is created the event tourism fund. Moneys deposited in the event tourism fund shall be expended in accordance with this section. Any unencumbered funds and any unexpended balance of the fund remaining at the end of any fiscal year shall not revert to the general fund, but shall be carried forward until expended in accordance with this section.

(2) No payment shall be made from the event tourism fund unless authorized by the department.

(d) A local organizing committee may apply to the department for the certification of an event in accordance with this section. An application for certification of an event must include:

(1) A proposed event venue and event period;

(2) An estimate of the event revenue to be collected within the event venue during the event period that is directly attributable to the preparation for and presentation of the event;

(3) Estimated attendance at the event;

(4) Financial information related to the projected revenue and expenses of the event;

(5) An estimate of the number of out-of-state visitors who will attend the event;

(6) A marketing plan for the event; and

(7) Any other relevant information as determined by the department.

(e) No funds shall be spent from the event tourism fund for an event unless the event is certified by the department of tourist development and the department of finance and administration. An event shall not be certified unless:

(1) The event is expected to have a measurable economic impact;

(2) The event would not be held in this state without certification of the event;

(3) An event venue and an event period have been approved;

(4) The state building commission has defined the boundaries of the event venue for the purposes of the event;

(5) The proposed expenses of the event are directly related to the event; and

(6) The event is located outside of a sports authority or tourism development zone that receives allocations pursuant to § 67-6-103(d), § 67-6-103(e), or § 7-88-106.

(f)(1) Following the completion of an event, a local organizing committee shall apply to the department for reimbursement of qualified expenses incurred by the local organizing committee, an endorsing local authority, and an event venue host related to the event. The total reimbursements paid for an event may not exceed the total event revenue deposited into the event tourism fund related to the event.

(2) Any allocations to the event tourism fund shall not include any amounts allocated to a sports authority or a tourism development zone pursuant to § 67-6-103(d), § 67-6-103(e), or § 7-88-106.

(3) To receive any reimbursement of qualified expenses, the event venue host must register the event and all associated vendors with the department of revenue on forms prescribed by the department. Any failure by the event venue host to register associated vendors with the department may reduce the total eligible reimbursement amount.

(g) All applications, documents, communications, and reports related to this section are public records subject to disclosure pursuant to title 10, chapter 7, part 5, except for any tax information or tax administration information that is confidential pursuant to chapter 1, part 17 of this title.

(h) Financial records directly related to the event that receives reimbursement for qualified expenses pursuant to this section are subject to audit by the comptroller of the treasury.

History.
Acts 2018, ch. 959, § 1.

67-6-106. Sales and use taxes collected on electronic nicotine delivery devices.

The department of revenue is directed to collect information regarding sales taxes the department collects on all electronic nicotine delivery devices, from all sources, including online sales, vape shops, and convenience stores. The department shall report its findings and any recommendations regarding such information on or before February 1, 2020, and on or before February 1 of each subsequent year until February 1, 2030, to the speaker of the senate, speaker of the house of representatives, and chairs of the finance, ways and means committees of the senate and house of representatives.

History.
Acts 2019, ch. 371, § 1.

Effective Dates.
Acts 2019, ch. 371, § 2. May 10, 2019.

PART 2

TAXES IMPOSED

67-6-201. Taxable privilege declared.

It is declared to be the legislative intent that every person is exercising a taxable privilege who:

(1) Engages in the business of selling tangible personal property at retail in this state;

(2) Uses or consumes in this state any item or article of tangible personal property as defined in this chapter, regardless of the ownership thereof or any tax immunity that may be enjoyed by the owner thereof;

(3) Is the recipient of any of the things or services taxable under this chapter;

(4) Rents or furnishes any of the things or services taxable under this chapter;

(5) Stores for use or consumption in this state any item or article of tangible personal property as defined in this chapter;

(6) Leases or rents such property, either as lessor or lessee, within this state;

(7) Charges admission, dues or fees taxable under this chapter;

(8) Sells space under this chapter;

(9) Charges a fee for subscription to, access to or use of television services provided by a video programming service provider;

(10) Charges a fee for subscription to, access to or use of television services delivered by a provider of direct-to-home satellite service; or

(11) Acts as a marketplace facilitator as defined in § 67-6-102.

History.

Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003; Acts 1984 (Ex. Sess.), ch. 13, § 4; 1985, ch. 406, § 5; 1999, ch. 423, § 1; 2003, ch. 357, § 19; 2004, ch. 959, §§ 62, 68; 2005, ch. 311, §§ 1, 2; 2007, ch. 602, §§ 44, 51, 137, 138, 187; 2009, ch. 530, §§ 35, 37; 2011, ch. 72, § 3; 2020, ch. 646, § 7.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 137, 138; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2020 amendment added (11).

Effective Dates.

Acts 2020, ch. 646, § 11. October 1, 2020.

67-6-202. Property sold at retail. [Effective until October 1, 2021. See the version effective on October 1, 2021.]

(a) For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of seven percent (7%). There is levied an additional tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property as defined in § 67-6-702(d). The tax levied at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property shall be in addition to all other taxes and shall be a state tax for state purposes only. No county or municipality or taxing district shall have the power to levy any tax on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property.

(b) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half

percent (5.5%) to six percent (6%) imposed by chapter 529 of the Public Acts of 1992 in this section and §§ 67-6-203, 67-6-204, 67-6-205, and 67-6-221 shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

(c) This section levies a tax on the sales price of tangible personal property obtained from any vending machine or device.

History.

Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(a); Acts 1984 (Ex. Sess.), ch. 8, §§ 1, 6, 8; 1984, ch. 742, § 1; 1985, ch. 356, §§ 2, 7; 1992, ch. 529, § 1; 1993, ch. 190, §§ 1, 2; 2002, ch. 856, § 4a; 2003, ch. 357, §§ 20, 21; 2004, ch. 959, § 68; 2005, ch. 311, §§ 1, 3; 2007, ch. 602, §§ 51, 70, 139; 2009, ch. 530, § 35; 2011, ch. 72, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 137, 138; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-202. Property sold at retail. [Effective on October 1, 2021. See the version effective until October 1, 2021.]

(a) For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of seven percent (7%). There is levied an additional tax at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property as defined in § 67-6-702(d). The tax levied at the rate of two and three-quarters percent (2.75%) on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property shall be in addition to all other taxes and shall be a state tax for state purposes only. No county or municipality or taxing district shall have the power to levy any tax on the amount in excess of one thousand six hundred dollars ($1,600), but less than or equal to three thousand two hundred dollars ($3,200), on the sale or use of any single article of personal property.

(b) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by chapter 529 of the Public Acts of 1992 in this section and §§ 67-6-203, 67-6-204, 67-6-205, and 67-6-221 shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

(c) This section levies a tax on the sales price of tangible personal property obtained from any micro market or vending machine or device.

History.

Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(a); Acts 1984 (Ex. Sess.), ch. 8, §§ 1, 6, 8; 1984, ch. 742, § 1; 1985, ch. 356, §§ 2, 7; 1992, ch. 529, § 1; 1993, ch. 190, §§ 1, 2; 2002, ch. 856, § 4a; 2003, ch. 357, §§ 20, 21; 2004, ch. 959, § 68; 2005, ch. 311, §§ 1, 3; 2007, ch. 602, §§ 51, 70, 139; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2021, ch. 289, § 2.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 137, 138; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2021 amendment substituted "from any micro market or vending machine" for "from any vending machine" in (c).

Effective Dates.

Acts 2021, ch. 289, § 6. October 1, 2021.

67-6-203. Property used, consumed, distributed or stored.

(a) A tax is levied at the rate of the tax levied on the sale of tangible personal property at retail by § 67-6-202 of the purchase price of each item or article of tangible personal property when the tangible personal property is not sold, but is used, consumed, distributed, or stored for use or consumption in this state; provided, that there shall be no duplication of the tax.

(b) A tax, which shall be paid by the distributor, is also levied at the rate set out in subsection (a) on the value of catalogues, advertising fliers, or other advertising publications distributed to residents of Tennessee; provided, that this tax shall not be duplicative of a sales or use tax otherwise collected on such publications. "Distributor" does not include the commercial printer or mailer of any such catalogues, advertising fliers, or other advertising publications; nor shall nexus to a taxpayer be established through a relationship with a commercial printer or mailer having a presence in Tennessee; nor shall the commercial printer or mailer have the obligation of collecting any such tax.

(c) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by chapter 529 of the Public Acts of 1992 in this section and §§ 67-6-202, 67-6-204, 67-6-205, and 67-6-221 shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

History.

Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(b); Acts 1984 (Ex. Sess.), ch. 8, § 2; 1985, ch. 356, § 3; 1991, ch. 29, § 2; 1992, ch. 529, § 2; 1993, ch. 190, §§ 1, 2; 2002, ch. 856, § 4c; 2003, ch. 357, §§ 4, 22; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 71, 140, 187; 2009, ch. 530, §§ 35, 38; 2011, ch. 72, §§ 1, 4.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 137, 138; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-205. Services.

(a) There is levied a tax at the rate of the tax levied on the sale of tangible personal property at retail by § 67-6-202 on the sales price of all services taxable under this chapter.

(b) Notwithstanding any other provision of law to the contrary, the one-half percent (0.5%) increase in the rate of the sales tax from five and one-half percent (5.5%) to six percent (6%) imposed by chapter 529 of the Public Acts of 1992 in §§ 67-6-202, 67-6-203, 67-6-204, 67-6-221, and this section shall remain in effect until changed by the general assembly. All revenue generated from such increases shall be deposited in the state general fund and earmarked for education purposes as provided in § 67-6-103(c)(2).

(c) The retail sale of the following services are taxable under this chapter:

(1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to persons by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to persons for a consideration. The tax does not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more; charges for or the value of the use of any time-share estate or perpetual interest in a trust, partnership, nonprofit corporation or limited liability company that has as its substantial purpose the ownership and control of real property; or charges for or amounts paid as a standard fee for the service of facilitating the exchange of one (1) time-share interval for another or the service of making a reservation for a time-share interval via a reservation system;

(2) Charges for services rendered by persons operating or conducting a garage, parking lot or other place of business for the purpose of parking or storing motor vehicles. The tax does not apply, however, to charges for such services made by the state and its political subdivisions when providing on-street parking space for which charges are collected, or when operating or conducting a garage or parking lot that is unattended and the charges are collected by parking meters;

(3) The furnishing, for a consideration, of intrastate, interstate or international telecommunication services;

(4) The performing, for a consideration, of any repair services with respect to any kind of tangible personal property or computer software;

(5) The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry or dry cleaning, where a charge is made for the laundering or dry cleaning; provided, that this subdivision (c)(5) does not apply to:

(A) The bathing of animals provided by a licensed veterinarian when rendered for a medical purpose in conjunction with the practice of veterinary medicine, as defined in § 63-12-103; and

(B) Any car wash facility, coin-operated or otherwise, where the customer remains in custody of the vehicle and the preponderance of the vehicle's wash is completed by the customer or automated equipment;

(6) The installing of tangible personal property that remains tangible personal property after installation and the installing of computer software,

where a charge is made for the installation, whether or not the installation is made as an incident to the sale of tangible personal property or computer software, and whether or not any tangible personal property or computer software is transferred in conjunction with the installation service;

(7) The enriching of uranium materials, compounds, or products that is performed on a cost-plus basis or on a toll enrichment fee basis;

(8) The renting or providing of space to a dealer or vendor without a permanent location in this state or to persons who are registered for sales tax at other locations in this state but who are making sales at this location on a less than permanent basis. This subdivision (c)(8) does not apply to the renting or providing of space to a craft fair, antique mall, or book fair or gun show, if the book fair or gun show is sponsored by a not-for-profit corporation. This subdivision (c)(8) also does not apply to the renting or providing of space at a flea market or the renting or providing of space at conventions, trade shows, or expositions, if the conventions, trade shows, or expositions do not allow the general public to enter the exhibit area for the purpose of making sales or taking orders for sales; and

(9) The furnishing, for a consideration, of ancillary services.

History.

Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(e); Acts 1984 (Ex. Sess.), ch. 8, § 4; 1985, ch. 356, § 5; 1992, ch. 529, § 4; 1992, ch. 913, § 4; 1993, ch. 190, §§ 1, 2; 1993, ch. 492, §§ 1-3; 2002, ch. 856, § 4e; 2003, ch. 357, §§ 24, 25; 2004, ch. 782, §§ 7, 8; 2004, ch. 959, §§ 63, 68; 2005, ch. 311, §§ 1, 2; 2007, ch. 602, §§ 51, 74, 75, 141; 2008, ch. 1106, §§ 5, 6; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2019, ch. 162, § 1.

Compiler's Notes.

Acts 2019, ch. 162, § 2 provides that the act shall apply to assessments imposed or pending as of April 18, 2019.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 141; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment rewrote (c)(5), which read: "The laundering or dry cleaning of any kind of tangible personal property, excluding coin-operated laundry, dry cleaning or car wash facilities, where a charge is made for the laundering or dry cleaning; provided, that this subdivision (c)(5) shall not apply to the bathing of animals provided by a licensed veterinarian when rendered for a medical purpose in conjunction with the practice of veterinary medicine, as defined in § 63-12-103;".

Effective Dates.

Acts 2019, ch. 162, § 2. April 18, 2019.

67-6-206. Industrial machinery and raw materials — Exemptions.

(a) After June 30, 1983, no tax is due with respect to industrial machinery.

(b)(1) Tax at the rate of one percent (1%) is imposed with respect to water when sold to or used by manufacturers. Tax at the rate of one and one-half percent (1.5%) shall be imposed with respect to gas, electricity, fuel oil, coal and other energy fuels when sold to or used by manufacturers.

(2) For the purpose of this subsection (b), "manufacturer" means one whose principal business is fabricating or processing tangible personal property for resale.

(3) The substances shall be exempt entirely from the taxes imposed by this chapter whenever it may be established to the satisfaction of the commissioner, by separate metering or otherwise, that they are exclusively used directly in the manufacturing process, coming into direct contact with the article being fabricated or processed by the manufacturer, and being expended in the course of the contact. Whenever the commissioner determines that the use of the substances by a manufacturer meets the test, the commissioner shall issue a certificate evidencing the entitlement of the manufacturer to the exemption. A copy of the certificate issued by the commissioner or a fully completed Streamlined Sales Tax certificate of exemption, which must include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, shall be furnished by the manufacturer to the manufacturer's supplier of the exempt substances. The certificate may be revoked by the commissioner at any time upon a finding that the conditions precedent to the exemption no longer exist.

(4) Any water or energy fuel used by a manufacturer in fabricating or processing tangible personal property for resale shall be exempt entirely from the taxes imposed by this chapter when the water or energy fuel are produced or extracted directly by the manufacturer from facilities owned by the manufacturer or in the public domain.

(5) Notwithstanding the requirement of direct contact, there shall be exempt entirely from the tax imposed by this chapter electricity used to generate radiant heat for production of heat-treated glass when sold to or used by manufacturers; provided, that the manufacturer has applied for and received a certificate of exemption as required by this section. The person shall furnish to that person's supplier of the substance a copy of the certificate or a fully completed Streamlined Sales Tax certificate of exemption, which must include the manufacturer's exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

(6)(A) Notwithstanding subdivisions (b)(1)-(5), the reduced rates provided by subdivision (b)(1) shall apply to the use of such substances by a person engaged at a location in packaging automotive aftermarket products manufactured at other locations by the same person or by a corporation affiliated with the manufacturing corporation, such that:

(i) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(ii) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(B) "Packaging", as used in this subdivision (b)(6), refers only to the fabrication and/or installation of that packaging that will accompany the automotive aftermarket product when sold at retail. The reduced rates shall apply only to such substances used in the packaging process. Such use must be established to the satisfaction of the commissioner by separate metering or otherwise. To qualify for the reduced rate under this subdivision (b)(6), a person shall apply for and receive a certificate of qualification for the reduced rate from the commissioner. The person shall

furnish to that person's supplier of the substances a copy of the certificate or a fully completed Streamlined Sales Tax certificate of exemption, which must include the exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the reduced rate.

(7) Notwithstanding the requirement of direct contact, natural gas used to generate heat for the production of primary aluminum, aluminum sheet and foil, and aluminum can sheet products when sold to or used by manufacturers shall be exempt entirely from the tax imposed by this chapter; provided, that the manufacturer applies for and receives a certificate of exemption as required by this section. Nothing shall be inferred from this subdivision (b)(7) as to the law in effect prior to this change.

(8) Notwithstanding subdivision (b)(2), the term "manufacturer" does not include any person whose principal business is the preparation of food for immediate retail sale.

(c)(1) Tax at the rate of one and one-half percent (1.5%) shall be imposed with respect to electricity when sold to or used by a qualified data center.

(2) No tax is imposed with respect to cooling equipment or backup power infrastructure when sold to or used by a qualified data center.

(3) As used in subdivision (c)(2):

(A) "Backup power infrastructure" means backup power generation, battery systems, and related infrastructure used primarily for and necessary to the operations of a qualified data center; and

(B) "Cooling equipment" means cooling systems, cooling towers, and other temperature control infrastructure used primarily for and necessary to the operations of a qualified data center.

(d) Any qualified data center that applies for job tax credits under § 67-4-2109 must certify on its business plan that it has not, within the previous twelve (12) months, been found to be in violation of the Worker Adjustment and Retraining Notification (WARN) Act (29 U.S.C. §§ 2101-2109), the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.), or federal immigration laws. Any qualified data center that fails to provide the required certification shall not qualify for job tax credits under § 67-4-2109.

History.

Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1980, ch. 871, § 1; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(g); Acts 1993, ch. 430, § 1; 1995, ch. 185, § 2; 1998, ch. 767, § 1; 2003, ch. 357, § 26; 2004, ch. 959, §§ 7, 68; 2005, ch. 311, §§ 1, 2; 2005, ch. 499, § 6; 2006, ch. 1019, § 35; 2007, ch. 602, §§ 37, 51, 76-78, 142, 187; 2009, ch. 530, §§ 35, 39; 2011, ch. 72, §§ 1, 5; 2016, ch. 1001, §§ 2, 3.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 142; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-207. Farm equipment and machinery.

(a) The sale at retail, lease, rental, use, consumption, distribution, repair, storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter when sold to a qualified farmer or nurseryman in accordance with subsection (e):

(1) Any appliance used directly and principally for the purpose of producing agricultural products, including nursery products, for sale and use or consumption off the premises, but excluding an automobile, truck, household appliances or property that becomes real property when erected or installed;

(2) Grain bins and attachments to grain bins;

(3) Aircraft designed and used for crop dusting, such as an agracat or other similar airplanes that are designed for crop dusting purposes;

(4) Equipment used exclusively for harvesting timber;

(5) Trailers used to transport livestock, as defined in § 44-18-101, farm products, nursery stock, or equipment, supplies, or products used in agriculture, as those terms are defined in § 43-1-113, or for other agricultural purposes relating to the operation and maintenance of a farm;

(6) Self-propelled fertilizer or chemical application equipment used to spread fertilizer or chemical on farms to aid in the production of food or fiber for human or animal consumption, notwithstanding the fact that the equipment may be mounted on a chassis with wheels, if the equipment is not designed for over-the-road use, but may be driven over-the-road from the source of supply to the farm, and tender beds and spreader beds, even if mounted on a truck chassis;

(7) Systems for poultry environment control, feeding and watering poultry and conveying eggs;

(8) Replacement parts or labor relative to the repair of the tangible personal property described in subdivisions (a)(1)-(7);

(9)(A) Gasoline or diesel fuel used for agricultural purposes, as defined in § 67-6-102; except that premixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter;

(B) For purposes of subdivision (a)(9)(A), "diesel fuel" means any petroleum distillate with at least twelve to sixteen (12-16) carbon atoms per molecule that has a boiling point of between three hundred fifty degrees Fahrenheit (350° F) and six hundred fifty degrees Fahrenheit (650° F) or any petroleum distillate that is ordinarily and customarily sold and used as a source of fuel for diesel engines;

(10) Seeds, seedlings, plants grown from seed and liners or cuttings that will produce food or fiber, including tobacco, for human or animal consumption;

(11) Fertilizer to be used to aid in the growth and development of seeds, seedlings or plants, as described in subdivision (a)(10);

(12)(A) Pesticides that are sold for the purpose of aiding in the production of food or fiber, including tobacco, for human or animal consumption;

(B) As used in this section, "pesticide" means any substance or mixture of substances or chemicals intended for defoliating or desiccating plants or

for preventing, destroying, repelling or mitigating any insects, rodents, fungi, bacteria or weeds, including, but not limited to, insecticides, fungicides, bactericides, herbicides, desiccants, defoliants, plant regulators and nematocides;

(13) Containers for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, as described in subdivision (a)(10), and plastic or canvas used in covering feed bins, silos and other similar storage structures;

(14) Livestock and poultry feeds, drugs used for livestock and instruments used for the administration of the drugs;

(15) Any natural or artificial substance used in the reproduction of livestock, including semen or embryos;

(16) Adjuvants and surfactants solutions sold exclusively for the purpose of mixture with insecticides, pesticides, fungicides or herbicides or for use as a soil conditioner when the solutions are intended to aid in the growth and development of food or fiber, including tobacco, for human or animal consumption;

(17) Agri-sawdust;

(18) Water, electricity, natural gas, and liquefied gas, including, but not limited to, propane and butane, used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale; and

(19) Coal, wood, wood products or wood byproducts, or fuel oil, which is used as energy fuel in the production of food or fiber for human or animal consumption or in production of nursery and greenhouse crops.

(b) Persons seeking to become qualified farmers or nurserymen shall apply to the commissioner for authority to make purchases exempt from tax. This application shall require information that the commissioner deems necessary. If the commissioner finds from the information that the applicant is entitled to be a qualified farmer or nurseryman, the commissioner shall issue a certificate granting the authority for a period of four (4) years, or until the applicant is no longer operating within the scope of its original application. Any misrepresentation made on the application by the applicant shall subject the applicant to any applicable tax, penalty and interest.

(c) Persons who have obtained authority from the commissioner to make purchases tax exempt as a qualified farmer or nurseryman shall provide their vendors with a copy of the certificate issued by the commissioner or a fully completed Streamlined Sales Tax certificate of exemption, which must include the exemption authorization number included on the certificate issued by the commissioner, to evidence qualification for the exemption.

(d) Persons making purchases exempt from tax under this section shall keep records to establish that the property qualifies for the exemption. The purchaser shall be liable for tax, penalty and interest for making nonqualifying purchases without payment of tax.

(e) For purposes of this section, "a qualified farmer or nurseryman" means a person who meets one (1) or more of the following criteria:

(1) The person is the owner or lessee of agricultural land from which one thousand dollars ($1,000) or more of agricultural products were produced

and sold during the year, including payments from government sources;

(2) The person is in the business of providing for-hire custom agricultural services for the plowing, planting, harvesting, growing, raising or processing of agricultural products or for the maintenance of agricultural land;

(3) The person is the owner of land that qualifies for taxation under the Agricultural Forest and Open Space Land Act of 1976, compiled in chapter 5, part 10 of this title;

(4) The person's federal income tax return contains one (1) or more of the following:

(A) Business activity on IRS schedule F, profit or loss from farming; and

(B) Farm rental activity on IRS form 4835, farm rental income and expenses or schedule E, supplemental income and loss; and

(5) The person otherwise establishes to the satisfaction of the commissioner that the person is actively engaged in the business of raising, harvesting or otherwise producing agricultural commodities as defined in § 67-6-301(c)(2).

(f) Notwithstanding subsection (e) to the contrary, a person that qualifies as a manufacturer under § 67-6-206 shall not qualify as a farmer or nurseryman under this section.

History.

Acts 1947, ch. 3, § 3; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 51, §§ 7, 8; 1955, ch. 242, § 6; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1971, ch. 78, § 1; 1971, ch. 117, § 2; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1980, ch. 871, § 2; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), § 67-3003(h); Acts 1996, ch. 721, § 3; 1998, ch. 635, § 1; 2003, ch. 357, § 27; 2004, ch. 959, §§ 8, 68; 2005, ch. 311, §§ 1, 2; 2007, ch. 602, §§ 51, 79; 2008, ch. 1106, §§ 23, 24; 2019, ch. 178, § 1; 2019, ch. 427, § 1.

Amendments.

The 2019 amendment, by ch. 178, rewrote (a)(5) which read: "Trailers used to transport livestock, as defined in § 44-18-101;".

The 2019 amendment, by ch. 427, rewrote (a)(18) which read: "Electricity, natural gas and liquefied gas, including, but not limited to, propane and butane used directly in the production of food or fiber for human or animal consumption or to aid in the growing of a horticultural product for sale; and".

Effective Dates.

Acts 2019, ch. 178, § 2. July 1, 2019.

Acts 2019, ch. 427, § 2. July 1, 2019.

67-6-209. Use of property produced or severed from earth — Exemptions.

(a) Where a manufacturer, producer, compounder or contractor erects or applies tangible personal property, that the manufacturer, producer, compounder or contractor has manufactured, produced, compounded or severed from the earth, other than:

(1) Any material severed from the earth and moved from one (1) place to another on the same construction or job site; and

(2) Dirt, soil, earth or any other kind of material when used for fill, whether from the same construction or job site or elsewhere;

such person so using the tangible personal property shall pay the tax levied in this section on the fair market value of such tangible personal property when used, without any deductions whatsoever; provided, that this subsection (a) shall not be construed to apply to contractors or subcontractors who fabricate, erect or apply tangible personal property that becomes a component part of a building, and that is not sold by them as a manufactured item.

(b) Where a contractor or subcontractor defined in this chapter as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by § 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for in this subsection (b) for private nonprofit colleges or universities shall apply only to the state portion of the sales tax. The sales or use tax levied by this chapter shall not apply to carpet installed for a church when the church is exempt from sales or use taxes under § 67-6-322. For purposes of this section, "private nonprofit college or university" includes a nonprofit academic medical center and teaching hospital that operates as a separate nonprofit corporation, but which, when founded, was operated as a division of a private nonprofit college or university and that continues to provide education and training of physicians, nurses, and other allied healthcare professionals.

(c) The tax imposed by this section shall have no application where the contractor or subcontractor, and the purpose for which such tangible personal property is used, would be exempt from the sales or use tax under any other provision of this chapter. However, the transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale, except as provided in § 67-6-102(39), and the contractor shall not be permitted on this basis to obtain the benefit of any exemptions or reduced tax rates available to manufacturers under § 67-6-102(46)(E) or § 67-6-206. Each location of a taxpayer will be considered separately in determining whether the taxpayer qualifies or is disqualified as a manufacturer at that location.

(d) The tax imposed by this section or by any other provision of this chapter shall have no application with respect to the use by, or the sale to, a contractor or subcontractor of atomic weapon parts, source materials, special nuclear materials and by-product materials, all as defined by the Atomic Energy Act of 1954 (42 U.S.C. § 2011 et seq.), or with respect to such other materials as would be excluded from taxation as industrial materials under § 67-6-102(46)(E), when the items referred to in this subsection (d) are sold or leased to a contractor or subcontractor for use in, or experimental work in connection with, the manufacturing processes for or on behalf of the atomic energy commission or when any of such items are used by a contractor or subcontractor in such experimental work or manufacturing processes.

(e) There is exempt from this chapter the sale or use of materials and equipment purchased or used for construction or installation, by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant or distribution system, any resource recovery facility where steam or electric energy is produced, or any coal gasification plant or distribution system owned or operated by the United States or any agency thereof created by an act of

congress, or by the state of Tennessee or any agency or political subdivision thereof, or any authority organized pursuant to the Rural Electric and Community Services Cooperative Act, compiled in title 65, chapter 25. There is also exempt the sale or use of materials and equipment purchased or used for construction or installation by a contractor, subcontractor or otherwise, of, in or as a part of any electric generating plant, including the transmission substation, owned or operated by any person, so long as such person does not now or intend in the future to generate electricity from a plant located in Tennessee or to distribute electricity to consumers in Tennessee.

(f) There is exempt from the tax imposed by this section or any other provision of this chapter pipes, fittings and materials used to repair or maintain a water utility system owned by a utility district created pursuant to title 7, chapter 82. This exemption applies only to pipes, fittings and materials which become an integral part of the water utility system. This exemption does not apply to any installation of pipes, fittings or materials for any reason other than repair or maintenance of an existing system.

(g) There is exempt from the tax imposed by this section tangible personal property that:

(1) Is installed by a dealer in manufactured homes, or furnished to a contractor by the dealer for use in the installation of a manufactured home; and

(2) Has previously been subjected to the tax imposed by § 67-6-216.

(h) There is exempt from the tax imposed by this chapter any tangible personal property owned by the United States, or any agency thereof, that is provided to a contractor or subcontractor on a temporary basis for testing pursuant to a contract awarded by the United States, or any agency thereof, to such contractor or subcontractor under the Small Business Innovation Research Program, as that term is defined in 15 U.S.C. § 638(e)(4). The exemption provided by this subsection (h) shall apply only to property that is the subject of the test being performed and property into which the subject of the test must be incorporated before the testing can occur. The exemption provided by this subsection (h) shall not apply to any equipment, machinery or other property used to conduct the test.

(i) There is exempt from the tax imposed by this chapter any tangible personal property that is provided to a contractor or subcontractor on a temporary basis for testing; provided, that the exemption shall apply only in those instances where the facility at which the testing is undertaken is owned by the United States or any agency of the United States. The exemption provided by this subsection (i) shall apply only to the property that is the subject of the test being performed and property into which the subject of the test must be incorporated before the testing can occur. Under no circumstances shall the exemption apply to property used to conduct the test or to property consumed or destroyed during the test. For this purpose, the term "testing" shall be limited to diagnostic, analytical and scientific testing in a controlled environment, dedicated to testing for the purpose of providing information and findings supportive of the aerodynamic, hypersonic, aeropropulsion, space, missile, aircraft and aerospace technologies and industries.

History.

Acts 1949, ch. 245, § 1; C. Supp. 1950, § 1248.52 (Williams, § 1328.24); Acts 1955, ch. 242, § 7; 1957, ch. 166, § 1; 1963, ch. 38, § 6; 1963, ch. 174, § 1; 1978, ch. 536, § 1; 1978, ch. 601, § 1; 1980, ch. 563, § 1; 1980, ch. 812, § 1; T.C.A. (orig. ed.), § 67-3004(a)-(e); Acts 1985, ch. 475, § 1; 1989, ch. 409, § 1; 1990, ch. 646, § 1; 1993, ch. 477, § 1; 1996, ch. 722, § 1; 1996, ch. 739, § 2; 1996, ch. 1006, § 1; 1997, ch. 194, § 4; 2003, ch. 357, § 28; 2004, ch. 725, § 1; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2005, ch. 371, § 1; 2007, ch. 602, §§ 51, 53, 143; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2021, ch. 429, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 143; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2021 amendment added the last sentence in (b).

Effective Dates.

Acts 2021, ch. 429, § 2. May 13, 2021.

67-6-217. Aviation fuel — Tax imposed — Reimbursement of transportation equity trust fund for decreased aviation fuel tax revenue — Report.

(a) Notwithstanding other provisions of this chapter, tax imposed with respect to the sale, the use, the consumption, the distribution, and the storage of aviation fuel that is actually used in the operation of airplane or aircraft motors, shall be at the rate of four and one-quarter percent (4.25%).

(b)(1) For purposes of this section:

(A) "Air carrier" means any person, firm, corporation, or entity providing air transportation of passengers or property;

(B) "Tax year" means a period beginning on July 1 and ending on the following June 30; and

(C) "Transportation hub" means a location in this state from which there originates fifty (50) or more flight departures five (5) days per week for six (6) or more months during the calendar year and where passengers or property are regularly exchanged at the location between flights of the same or a different certificated or licensed air carrier.

(2) The tax imposed and remitted on a person's purchase, use, consumption, or storage of aviation fuel, pursuant to subsection (a), that is used in the operation of an aircraft of a certificated or licensed air carrier with a transportation hub within this state, shall not exceed the following:

(A) Eight million five hundred thousand dollars ($8,500,000) for the period of July 1, 2021, through June 30, 2022; and

(B) Five million dollars ($5,000,000) for any tax year occurring on or after July 1, 2022.

(3) The commissioner shall establish a process for applying the cap provided by this subsection (b).

(c) The transportation equity trust fund must be reimbursed for decreased aviation fuel tax revenue resulting from any public act passed by the general assembly after January 1, 2021, in an amount equal to the estimated decrease in tax revenue as reflected in the fiscal note prepared for such legislation by the fiscal review committee in accordance with § 3-2-107. Any reimbursement to the transportation equity trust fund in accordance with this subsection (c) must be made from the general fund, subject to appropriation by the general assembly in the annual general appropriations act.

(d) On or before December 31 each year, the department of finance and administration shall report in writing to the chairs of the finance, ways and means committees of the senate and the house of representatives, the chair of the transportation committee of the house of representatives, and the chair of the transportation and safety committee of the senate, the total amount of tax revenues collected pursuant to this section for the preceding fiscal year.

History.

Acts 1986, ch. 931, § 1; 1987, ch. 90, § 1; 2003, ch. 357, § 30; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2009, ch. 530, §§ 35, 40; 2011, ch. 72, §§ 1, 6; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2015, ch. 462, § 1; 2017, ch. 193, § 1; 2019, ch. 157, § 1; 2021, ch. 477, § 1.

Compiler's Notes.

Section 67-6-217 (Acts 1986, ch. 931, § 1; 1987, ch. 90, § 1; 2003, ch. 357, § 30; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2006, ch. 989, § 14; 2007, ch. 602, §§ 144, 187; 2009, ch. 530, §§ 35, 40; 2011 ch. 72, §§ 1, 6), concerning aviation fuel, is repealed by Acts 2007, ch. 602, § 144, as amended by Acts 2009, ch. 530, § 35, and further amended by Acts 2011, ch. 72, § 1, and further amended by Acts 2013, ch. 480, § 1, and further amended by Acts 2015, ch. 273, § 3, and further amended by Acts 2017, ch. 193, § 1, and further amended by Acts 2019, ch. 157, § 1, effective July 1, 2021.

This section was to be repealed effective July 1, 2021, by Acts 2007, ch. 602, § 144; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Amendments.

The 2021 amendment rewrote this section which read: "(a) Notwithstanding other provisions of this chapter, tax imposed with respect to the sale, the use, the consumption, the distribution and the storage of aviation fuel that is actually used in the operation of airplane or aircraft motors, shall be at the rate of four and one-half percent (4.5%).

"(b)(1) The tax imposed and remitted on a person's purchase, use, consumption, or storage of aviation fuel pursuant to subsection (a) shall not exceed the following:

"(A) Twenty-one million three hundred seventy-five thousand dollars ($21,375,000) for the period of July 1, 2015 through June 30, 2016;

"(B) Seventeen million seven hundred fifty thousand dollars ($17,750,000) for the period of July 1, 2016 through June 30, 2017;

"(C) Fourteen million one hundred twenty-five thousand dollars ($14,125,000) for the period of July 1, 2017 through June 30, 2018; and

"(D) Ten million five hundred thousand dollars ($10,500,000) for any tax year occurring on or after July 1, 2018.

"(2) For purposes of this subsection (b), 'tax year' means a period beginning on July 1 and ending on the following June 30. The commissioner shall establish a process for applying the cap provided by subdivision (b)(1)."

Effective Dates.

Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

Acts 2021, ch. 477, § 2. July 1, 2021.

67-6-219. Sales of tangible personal property to common carriers for use outside state.

(a) Notwithstanding other provisions of this chapter, tax is imposed with respect to sales of tangible personal property to common carriers for use outside this state at the rate of three and seventy-five hundredths percent (3.75%).

(b) Persons seeking to make purchases at the reduced rate provided in this section shall apply to the commissioner for a certificate as provided in § 67-6-528. In order to obtain the reduced tax rate, a copy of the certificate provided for by this section or a fully completed Streamlined Sales Tax certificate of exemption shall be given by the common carrier to each dealer from which it intends to make purchases at the reduced rate.

(c) If a common carrier purchases property at the reduced rate and the property is used inside the state or the common carrier fails to keep records as required by the commissioner to establish that property purchased at the reduced rate was not used in this state, but was removed from this state for use

and consumption outside this state, then the common carrier shall be liable for tax at the full rate provided by § 67-6-203, regardless of whether the carrier had previously obtained a certificate as provided by this section.

(d) This section does not apply to sales of food and food ingredients, alcoholic beverages, tobacco, candy, dietary supplements, prepared food or fuel.

History.

Acts 1987, ch. 428, § 2; 2003, ch. 357, § 32; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 82, 145; 2009, ch. 530, §§ 35, 41; 2011, ch. 72, §§ 1, 7; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; 2019, ch. 157, § 1.

Compiler's Notes.

This section was to be repealed effective July 1, 2021, by Acts 2007, ch. 602, § 145; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Effective Dates.

Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

67-6-221. Tax imposed on interstate or international telecommunications services sold to businesses — Privilege tax imposed on modern market telecommunications providers — Penalty.

(a) Notwithstanding any other provision of the law to the contrary, interstate or international telecommunication services sold to businesses shall be subject to a tax imposed at the rate of seven and one-half percent (7.5%).

(b) The revenue from a rate equal to one-half percent (0.5%) of the tax shall be deposited in the general fund. The remainder of the revenue generated from the tax imposed by subsection (a) shall be distributed to municipalities and counties in accordance with subsection (c) to mitigate the impact on local governments as the result of assessing the operating property of modern market telecommunications providers as commercial and industrial property rather than as public utility property. The department of revenue shall hold all such revenue until it is first distributed to the local governments on March 20, 2018, or as soon thereafter as possible, to allow sufficient time to determine the correct distribution of revenue under subsection (c).

(c) On or before January 1, 2018, the office of state assessed properties in the office of the comptroller of the treasury shall calculate, for each local government levying an ad valorem property tax, the difference in property tax revenue or comparable in lieu of tax payments received for tax year 2017 that results from assessing the operating property of modern market telecommunications providers as commercial and industrial property rather than as public utility property. These calculations shall be used to calculate each local government's percentage share of the total reduction in such revenue for tax year 2017 and these percentages shall be forwarded to the department of revenue by January 1, 2018. For all periods beginning on or after June 1, 2017, the department shall distribute the revenue generated from the tax imposed under subsection (a), other than the revenue earmarked for the general fund under subsection (b), to the local governments in proportion to each local government's percentage share of the total difference in property tax and in lieu of tax revenue for tax year 2017, as reported to the department by the office of state assessed properties pursuant to this subsection (c).

(d)(1) Beginning January 1, 2018, notwithstanding any law to the contrary, every modern market telecommunications provider shall pay an annual privilege tax for the privilege of competing with public utilities to provide telecommunications services in this state.

(2) Except as otherwise provided in subdivision (d)(3), the amount of tax imposed under this subsection (d) shall be equal to the sum of:

(A) The taxpayer's pro rata share percentage multiplied, as applicable, by:

(i) Four million dollars ($4,000,000), for the tax imposed in 2018;

(ii) Three million dollars ($3,000,000), for the tax imposed in 2019;

(iii) Two million dollars ($2,000,000), for the tax imposed in 2020;

(iv) One million dollars ($1,000,000), for the tax imposed in 2021; and

(v) Zero dollars ($0.00), for the tax imposed in 2022; and

(B) The taxpayer's pro rata share percentage multiplied, as applicable, by:

(i) Seven hundred fifty thousand dollars ($750,000), for the tax imposed in 2018, 2019, and 2020; and

(ii) Five hundred thousand dollars ($500,000), for the tax imposed in 2021 and 2022.

(3) The total privilege tax imposed on a taxpayer under this subsection (d) shall not exceed the difference between:

(A) The aggregate ad valorem taxes and in lieu of tax payments paid by such taxpayer to political subdivisions of this state during the prior tax year; and

(B) The net amount of ad valorem tax and in lieu of tax payments such taxpayer would have paid in the prior tax year had its operating property been classified as public utility property, less the amount of the most recent payment such taxpayer received under § 67-6-222(b).

(4) Any taxpayer claiming that subdivision (d)(3) applies to limit its privilege tax liability for a particular tax year shall notify the department of revenue of such claim in the manner prescribed by the department and must prove by clear and convincing evidence that such limitation applies.

(5) The privilege tax shall be reported and paid annually to the department of revenue on or before April 20 of each year in the manner prescribed by the department. On or before March 1, 2018, the department shall coordinate with the office of state assessed properties in the office of the comptroller of the treasury to calculate the pro rata share percentage of each taxpayer subject to the privilege tax imposed by this subsection (d) and shall send notice to each such taxpayer providing the taxpayer with its pro rata share percentage and prescribing the manner in which the taxpayer must report and pay the privilege tax imposed by this subsection (d).

(6) Notwithstanding any law to the contrary, all moneys received by the department of revenue under this subsection (d) shall be distributed in the following manner:

(A) The revenue from the portion of the tax calculated under subdivision (d)(2)(A) shall be deposited in the general fund; and

(B) The revenue from the portion of the tax calculated under subdivision (d)(2)(B) shall be distributed to the local governments in the same proportion that revenue is distributed to local governments under subsec-

tion (c).

(7) Any moneys received from a taxpayer that prove by clear and convincing evidence that the limit set forth in subdivision (d)(3) applies for a particular tax year shall be deposited in the general fund and distributed to the local governments in the same relative proportion as those moneys would have been deposited in the general fund under subdivision (d)(6)(A) and distributed to the local governments under subdivision (d)(6)(B) in the same tax year if the limitation on privilege tax liability had not applied.

(8) This subsection (d) shall be repealed on December 31, 2022. No privilege tax shall be levied under this subsection (d) after December 31, 2022. This subdivision (d)(8) shall not absolve any taxpayer of liability for any tax levied under this subsection (d) prior to December 31, 2022.

(9) This subsection (d) shall not apply to a municipal or similar provider of broadband services that makes in lieu of tax payments pursuant to title 7, chapter 52, part 4 or 6, or that makes similar in lieu of tax payments pursuant to a private act.

(e) When any person fails to correctly report on a return the person's sales of interstate or international telecommunications services subject to tax under subsection (a), there shall be imposed a penalty in the amount of ten percent (10%) of the taxes due on such sales or twenty-five percent (25%) of the taxes due on such sales if the commissioner determines that the failure to correctly report such sales is the result of gross negligence. The commissioner may waive such penalty, in whole or in part, if the commissioner determines that the failure is not due to gross negligence, intentional disregard for any tax law or rule promulgated under this title, or fraud.

(f) As used in this section:

(1) "Modern market telecommunications provider" means a modern market telecommunications provider, as defined in § 67-5-501, that was operating within the state as of January 1, 2017, and that received an ad valorem tax equity payment under § 67-6-222(b) in at least one (1) of the three (3) years prior to January 1, 2017; and

(2) "Pro rata share percentage" means a taxpayer's pro rata share of the total assessed value of all operating property used by modern market telecommunications providers in the state during tax year 2017.

History.

Acts 1989, ch. 312, § 10; 1992, ch. 529, § 5; 1993, ch. 190, §§ 1, 2; 1999, ch. 413, § 4; 2001, ch. 195, § 1; 2003, ch. 357, § 33; 2004, ch. 592, § 10; 2004, ch. 782, § 9; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2005, ch. 500, § 9; 2006, ch. 989, § 14; 2009, ch. 530, §§ 35, 42; 2011, ch. 72, §§ 1, 8; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; 2017, ch. 490, § 12; 2019, ch. 157, § 1.

Compiler's Notes.

This section was to be repealed effective July 1, 2021, by Acts 2007, ch. 602, § 146; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Effective Dates.

Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

67-6-224. Qualified headquarters facility.

(a) A taxpayer that constructs, expands, or remodels a headquarters facility in this state through a minimum capital investment of at least ten million dollars ($10,000,000) and creates at least one hundred (100) new full-time employee jobs in conjunction with the construction, expansion, or remodeling of such facility shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sale or use of qualified tangible personal property that is directly related to the creation of the new full-time employee jobs.

(b) For purposes of this section, the following definitions shall apply:

(1) "Facility" means a building or buildings, either newly constructed, expanded, or remodeled, housing headquarters staff employees and located in a county or metropolitan statistical area in this state. A facility may include parking facilities exclusively for the use of headquarters staff employees and visitors; provided, that the parking facilities are built in conjunction with the newly constructed, expanded, or remodeled building or buildings. An expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in this state. The facility must be utilized as a headquarters facility for a period of at least ten (10) years from the end of the investment period;

(2) "Full-time employee job" means a permanent, rather than seasonal or part-time, employment position that provides employment as a headquarters staff employee to a person for at least thirty-seven and one-half (37.5) hours per week with minimum health care, as described in title 56, chapter 7, part 22, and that pays at least one hundred fifty percent (150%) of the state's average occupational wage, as defined in § 67-4-2004, for the month of January of the year in which the full-time employee job was created;

(3) "Headquarters facility" means a facility in this state that houses the international or national headquarters of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters-related functions and services are performed; provided, that any taxpayer that has filed an application and business plan as a regional headquarters with the department prior to July 1, 2015, shall continue to be eligible for the credit described in subsection (a);

(4) "Headquarters-related functions and services" means those functions involving administrative, planning, research and development, marketing, personnel, legal, computer, or telecommunications services performed by headquarters staff employees on an international or national basis. "Headquarters-related functions and services" does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center; provided, that any taxpayer that has filed an application and business plan as a regional headquarters with the department prior to July 1, 2015, shall continue to be eligible for the credit described in subsection (a);

(5) "Headquarters staff employees" means executive, administrative, or professional workers performing headquarters-related functions and ser-

vices. An executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise. An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations. A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study;

(6) "Investment period" means that the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility. However, in no event shall the investment period exceed six (6) years;

(7) "Minimum capital investment" means an investment by the taxpayer and the lessor to the taxpayer of ten million dollars ($10,000,000), during the investment period, in a building or buildings, either newly constructed, expanded, or remodeled. The minimum capital investment may include, but is not limited to, the purchase price of an existing building and the cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities and landscaping, but shall not include land or inventory;

(8) "New full-time employee job" means full-time headquarters staff employee jobs that are new to this state, that increase net employment of the taxpayer above the level of employment in existence immediately prior to the beginning of the investment period, and that, for at least ninety (90) days, did not exist in Tennessee as a job position of the taxpayer or of another business entity. The new full-time employee jobs must be created and filled within the investment period. An employee in a new full-time employee job may be employed at a temporary location in this state, pending completion of construction, expansion, or remodeling work at the qualified headquarters facility;

(9) "Qualified headquarters facility" means a headquarters facility where the taxpayer has made the minimum capital investment and has created the required number of new full-time employee jobs to be entitled to the credit provided by this section; and

(10) "Qualified tangible personal property" means building materials, machinery, equipment, furniture and fixtures used exclusively in the qualified headquarters facility and purchased or leased during the investment period and computer software used primarily in the qualified headquarters facility and purchased or leased during the investment period; provided, however, that "qualified tangible personal property" only includes such property that is directly related to the creation of the new full-time employee jobs. "Qualified tangible personal property" does not include supplies or repair parts. "Qualified tangible personal property" does not include any payments with respect to leases of qualifying tangible personal property that extend beyond the investment period. "Qualified tangible personal property" does not include any materials, machinery, equipment, furniture, or fixtures that replace tangible personal property that previously generated a credit under this section.

(c) A taxpayer qualifying for this credit must be subject to the taxes imposed by chapter 4, parts 20 and 21 of this title or be an insurance company as defined in § 56-1-102 or be a general partnership that is entitled to compute a job tax credit pursuant to § 67-4-2109(b)(3)(H). The taxpayer shall not be permitted to take advantage of any additional sales tax or other state tax credits, exemptions, or reduced rates that would otherwise be valuable as a result of the same purchases or minimum investment, except the tax credits provided under §§ 67-4-2009(1) and (3)(A)(ii) and 67-4-2109(b) and (c). A taxpayer qualifying for this reduced rate shall also not be permitted to utilize the credits available to hospital companies under § 67-4-2009.

(d)(1) A taxpayer seeking this credit shall first submit to the commissioner of revenue an application to qualify as a headquarters facility, together with a plan describing the investment to be made, the number of new full-time employee jobs to be created, and a description of such jobs. In the case of a leased facility, the lessor shall also file an application and plan, if any taxes paid by the lessor are to be claimed as part of the credit provided in subsection (a). The application and plan shall be submitted on forms prescribed by the commissioner and shall demonstrate that the requirements of the law will be met.

(2) After approval of the application and business plan, the commissioner shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for the credit provided for in this section.

(3) In order to receive the credit, the taxpayer must submit a claim for credit, along with documentation as required by the commissioner showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor, in the case of a leased facility, contractors, and subcontractors on sales or use of qualified tangible personal property. Documentation verifying that the minimum investment requirements have been met shall include, but are not limited to, employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules as required by the commissioner.

(4) In order to receive the credit, the taxpayer must also certify, on a form prescribed by the department, the number of new full-time employee jobs created and that the purchases of qualified tangible personal property for which the credit is claimed are directly related to the creation of such new full-time employee jobs.

(5) The commissioner shall review the claim for credit, and notify the taxpayer of the approved tax credit amount and provide direction for taking the credit. The taxpayer may not take the credit until the commissioner has notified the taxpayer of the amount approved and provided direction to the taxpayer on the proper methodology for taking the credit. The credit may only be taken by the taxpayer making the minimum capital investment of at least ten million dollars ($10,000,000) and creating at least one hundred (100) new full-time employee jobs in conjunction with the construction, expansion, or remodeling of the qualified headquarters facility.

(e) [Deleted by 2019 amendment.]

(f) If the minimum investment requirements are not made within the investment period, or the terms of this section are not met, the taxpayer shall be subject to assessment for any sales or use tax, penalty, or interest that would otherwise have been due and for which credit was taken. The statute of limitations shall not begin to run on these assessments until December 31 of the final year of the ten-year period provided for in subdivision (b)(1).

(g) Credits under this section shall not reduce the taxes earmarked and allocated to education, pursuant to § 67-6-103(c).

(h) Nothing in this section shall require that the taxpayer establish its commercial domicile in this state in order to receive the credit.

(i)(1) The commissioner may, in the commissioner's sole discretion, enter into a managed compliance agreement with a taxpayer that is entitled to the credit provided in this section. The agreement may provide for:

(A) One (1) or more effective rates to be applied to a predetermined base of purchases subject to the credit provided in this section for a defined period;

(B) A procedure under which the eligible taxpayer can use a direct pay permit issued by the commissioner to purchase tangible personal property without paying to its supplier the tax imposed by this chapter and to remit the tax due on the tangible personal property directly to the department;

(C) A term not to exceed the investment period; provided, that nothing shall preclude the commissioner from entering into a subsequent agreement with the same taxpayer;

(D) The conditions under which the agreement may require modification or termination;

(E) A procedure to resolve disputes concerning the agreement; and

(F) Any other provisions that the commissioner and the eligible taxpayer mutually agree upon to carry out the purposes of this section.

(2) The commissioner may, in the commissioner's sole discretion, terminate a managed compliance agreement and conduct an audit of an eligible taxpayer if the taxpayer fails to fulfill any of the terms of the agreement and the failure is materially adverse to the commissioner and the taxpayer fails to cure the failure not later than thirty (30) days after the mailing of written notice of such failure by the commissioner; provided, however, that no such notice need be given in the event the failure is not capable of being cured or the commissioner believes that the collection of any tax required to be collected and paid to the state or of any assessment will be jeopardized by delay.

(3) Other than as authorized by this section and expressly agreed in the managed compliance agreement, nothing in this section shall abridge or alter any requirements, rights or obligations of an eligible taxpayer or the commissioner granted or imposed by statute or regulation.

(4) For purposes of this subsection (i):

(A) "Eligible taxpayer" means any person that has qualified to receive the credit provided in this section and that, in the opinion of the commissioner, meets the following criteria:

(i) Demonstrates a willingness and ability to comply with the tax laws of this state;

(ii) Maintains an acceptable system of internal controls and business records; and

(iii) Cooperates with the state's efforts to collect tax; and

(B) "Managed compliance agreement" means an agreement between the commissioner and an eligible taxpayer that provides for an agreed upon method for calculating the credit due under this section.

History.

Acts 2003, ch. 284, § 1; 2005, ch. 499, §§ 57, 58; 2006, ch. 1019, §§ 36, 37; 2007, ch. 602, § 3; 2008, ch. 1106, §§ 27, 51; 2009, ch. 530, §§ 9, 19, 20; 2011, ch. 508, §§ 1-12; 2015, ch. 504, §§ 18-20; 2019, ch. 451, § 3.

Compiler's Notes.

Acts 2019, ch. 451, § 4 provided that section 3 of the act, which amended this section, shall apply to tax years beginning on or after January 1, 2019.

Amendments.

The 2019 amendment deleted (e), which read:

"(e) If determined to be in the best interests of the state, the commissioner of revenue and the commissioner of economic and community development are authorized to lower the number of jobs that must be created in order to qualify for the credit provided in this section; provided, however, that the amount of the credit shall also be reduced in direct proportion to the reduction in the job creation requirement. Under no circumstances, however, shall the job creation requirement be lowered by more than fifty percent (50%)."

Effective Dates.

Acts 2019, ch. 451, § 4. July 1, 2019.

67-6-226. Sales tax on cable and wireless cable television services.

Notwithstanding other provisions of this chapter to the contrary, commencing on September 1, 1999, state tax at the rate of eight and one-quarter percent (8.25%) on each sale at retail is imposed with respect to fees for subscription to, access to, or use of television programming or television services provided by a video programming service provider offered for public consumption, except such state tax shall not apply to television programming or television service charges or fees in an amount less than fifteen dollars ($15.00) provided by a video programming service provider offered for public consumption.

History.

Acts 1999, ch. 423, § 3; 2003, ch. 357, § 34; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 45, 51, 147; 2009, ch. 530, §§ 35, 43; 2011, ch. 72, §§ 1, 9; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; 2019, ch. 157, § 1.

Compiler's Notes.

This section was to be repealed effective July 1, 2021, by Acts 2007, ch. 602, § 147; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Effective Dates.

Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

67-6-227. Sales tax on satellite television services.

Notwithstanding other provisions of this chapter to the contrary, state tax at the rate of eight and one-quarter percent (8.25%) on each sale at retail is imposed with respect to fees for subscription to, access to, or use of television programming or television services delivered by a provider of direct-to-home satellite service.

History.

Acts 1999, ch. 423, § 7; 2003, ch. 357, § 35; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2009, ch. 530, §§ 35, 44; 2011, ch. 72, §§ 1, 10; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; 2019, ch. 157, § 1.

Compiler's Notes.

This section was to be repealed effective July 1, 2021, by Acts 2007, ch. 602, § 148; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Effective Dates.

Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

PART 3

EXEMPTIONS

67-6-313. Interstate commerce — Repair services — Tax credit.

(a) It is not the intention of this chapter to levy a tax upon articles of tangible personal property imported into this state or produced or manufactured in this state for export.

(b) There is exempt from the sales and use tax repair services, including parts and labor, with respect to qualified tangible personal property, where such services are initiated or completed, or both, by a repair person within this state, and where such property, after having repair services performed on it, is delivered or shipped outside this state. "Qualified tangible personal property" includes machinery, apparatus and equipment, with all associated parts, appurtenances and accessories, that is necessary for:

(1) Extracting or removing any natural resources, including, but not limited to, that which is necessary for mining or logging endeavors;

(2) Building or improving roads or highways;

(3) Land clearing or excavation, or commercial or residential construction; or

(4) Loading and unloading of containers or truck trailers on and off rail cars, ships, barges or aircraft.

(c)(1) There is exempt from the sales and use tax all repair service labor performed with respect to aircraft engine equipment and aircraft mainframes, where the repair services on such aircraft engine equipment or aircraft mainframes are initiated, performed or completed in repair facilities within this state.

(2) For the purposes of this subsection (c):

(A) "Aircraft engine equipment" means any aircraft engine, including all associated parts, appurtenances and accessories, for the propulsion of aircraft used by a commercial interstate or international air carrier;

(B) "Aircraft mainframes" means any aircraft body, wing, tail assembly, aileron, rudder, landing gear, engine housing, and any other assembly or component integral to the aerodynamic structure of aircraft used by a commercial interstate or international air carrier; and

(C) "Repair service labor" includes all labor performed in connection with the repair, maintenance, overhauling, rebuilding, or modifying of aircraft engine equipment or of aircraft mainframes together with any test or inspection necessary or appropriate thereto.

(d) There is exempt from the sales and use tax repair services, including parts and labor, to equipment used primarily in interstate commerce, where

such repairs are performed outside of Tennessee and the original purchase of such equipment was exempt from sales and use tax.

(e) There is exempt from the sales and use tax all repair parts and labor performed on fire protection machinery, apparatus, and equipment, with all associated parts, appurtenances, and accessories owned by fire departments in states other than Tennessee.

(f) In order to prevent actual multistate taxation of the acts and privileges subject to tax under this chapter, any taxpayer, upon proof acceptable to the commissioner being submitted that the taxpayer has properly paid sales and use tax in another state on such acts and privileges, shall be allowed a credit against the tax imposed by this chapter to the extent of the amount of such tax properly due and paid in another state.

(g)(1) There is exempt from the sales and use tax all repair service labor performed with respect to railroad rolling stock, where the repair services on such railroad rolling stock are initiated, performed or completed in repair facilities located within this state.

(2) As used in this subsection (g):

(A) "Railroad rolling stock" means all railroad equipment, operating on flanged wheels, that is currently being used, or is reasonably intended to be used, principally in interstate commerce; and

(B) "Repair service labor" means labor performed with respect to the repair, maintenance, overhauling, rebuilding, modifying or adapting of railroad rolling stock, together with any test or inspection necessary or appropriate thereto. Such exemption does not apply to repair service labor performed by non-Class 1 railroad companies on Class 1 railroad rolling stock.

(h)(1) There shall be exempt from the sales and use tax the following:

(A) Sales of helicopters or airplanes and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters or airplanes and related equipment are intended to have a situs out of Tennessee, are in fact removed from Tennessee, within thirty (30) days from the date of their purchase;

(B) Repair and refurbishment services within Tennessee with respect to helicopters and helicopter components and parts that have their situs outside of Tennessee and are removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services. "Repair and refurbishment services" as used in this subdivision (h)(1)(B) and in subdivisions (h)(1)(C) and (D) includes, but is not limited to, modifications, conversions, and installations;

(C) In addition to the exemptions in subdivisions (h)(1)(A) and (B), sales of helicopters and related equipment within Tennessee to purchasers who are not residents of the state, where such helicopters and related equipment are intended to have a situs out of Tennessee, and where such helicopters and related equipment remain within Tennessee following such sale solely for purposes of repair and refurbishment services, and are in fact removed from Tennessee within fifteen (15) days from the completion of such repair and refurbishment services; and

(D) Repair and refurbishment services within Tennessee with respect to airplanes and airplane components and parts which have their situs

outside of Tennessee and are removed from Tennessee within thirty (30) days from the completion of such repair and refurbishment services when such repair or refurbishment services with respect to such airplanes or airplane components or parts are:

(i) Performed pursuant to and by the registered owner of one (1) or more "supplemental type certificates" issued by the federal aviation administration; or

(ii) Performed pursuant to and by an authorized service facility designated by an original equipment manufacturer for such service with respect to aircraft qualifying as "transport category aircraft" under 14 CFR, parts 25, 29, 91 and 121.

(2) As used in this subsection (h), "helicopter" means an aircraft that derives its lift from blades that rotate about an approximately vertical central axis and that can hover in a stationary position while in flight and move laterally or longitudinally from the hover position.

(i) There is exempt from the sales and use tax the sale of all repair parts, accessories, materials and supplies to a common carrier for use on the purchasing carrier's freight motor vehicles with a maximum gross weight rating classification of Class One or above under § 55-4-113, or trailers, semi-trailers and pole trailers, as defined in §§ 55-1-105 and 55-4-113, and that are shipped via the purchasing carrier under a bill of lading and transported to a destination outside of this state for use outside this state, where the seller and the purchasing carrier are affiliated with one another such that:

(1) Either corporation directly owns or controls one hundred percent (100%) of the capital stock of the other corporation; or

(2) One hundred percent (100%) of the capital stock of both corporations is directly owned or controlled by a common parent.

(j) There is exempt from sales and use tax, computer media exchange services, where the resulting media is shipped out of Tennessee or to a government agency or nontaxable entity located within Tennessee. "Media exchange services" means the process of transferring stored data from one (1) type of storage medium to another type of storage medium, including, but not limited to, magnetic tapes, magnetic cartridges, CD-ROM, magnetic disks/diskettes, laser disks/diskettes, optical disks/diskettes, or any similar media that is used to store or transfer data from one (1) computer to another.

(k)(1) There is exempt from the sales and use tax all repair and refurbishment service labor performed with respect to large aircraft mainframes, large aircraft engine equipment, and large aircraft accessories, when the repair and refurbishment services on the mainframes, equipment, and accessories are initiated, contracted, performed, or completed in or by an authorized large aircraft service facility, including, but not limited to, repair and refurbishment service labor performed by an authorized large aircraft service facility pursuant to the terms of guaranty, warranty, or service contracts.

(2) In addition to the exemptions provided in subdivisions (h)(1) and (k)(1), there is exempt from the sales and use tax all sales, leases, and purchases of large aircraft and related equipment, and their use, storage, or

consumption within this state following the sale, lease, or purchase, when the large aircraft and related equipment have or are intended to have a situs outside of this state following the sale, lease, or purchase, and when the large aircraft and related equipment are in and remain within this state following the sale, lease, or purchase solely for purposes of repair and refurbishment services by an authorized large aircraft service facility, and are in fact removed from this state within fifteen (15) days from the completion of the repair and refurbishment services.

(3) As used in this subsection (k):

(A) "Authorized large aircraft service facility," "large aircraft," "large aircraft accessories," "large aircraft engine equipment," "large aircraft mainframes," and "repair and refurbishment services" have the same meanings as defined in § 67-6-302;

(B) "Large aircraft and related equipment" means a large aircraft consisting of a large aircraft mainframe and large aircraft engine equipment, including any large aircraft accessories associated with the large aircraft or aircraft engine, whether installed or uninstalled; and

(C) "Repair and refurbishment service labor" means all labor performed in connection with repair and refurbishment services.

History.

Acts 1947, ch. 3, § 4; C. Supp. 1950, § 1248.56 (Williams, § 1328.25); T.C.A. (orig. ed.), § 67-3007; Acts 1985, ch. 420, § 1; 1986, ch. 518, § 1; 1986, ch. 805, § 1; 1987, ch. 294, § 1; 1987, ch. 433, § 1; 1989, ch. 312, § 6; 1989, ch. 430, § 3; 1993, ch. 318, § 1; 1995, ch. 80, § 1; 1996, ch. 807, § 1; 1997, ch. 209, § 1; 1997, ch. 238, § 1; 2003, ch. 357, § 80; 2004, ch. 724, § 1; 2004, ch. 959, §§ 10, 68; 2005, ch. 311, §§ 1, 2; 2007, ch. 602, §§ 51, 149; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2012, ch. 1078, § 1; 2013, ch. 480, § 1; 2015, ch. 48, §§ 1-2; 2015, ch. 506, § 2.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 149; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

NOTES TO DECISIONS

Analysis

2. Criteria for Liability.
4. Goods Not Exempted.

2. Criteria for Liability.

Where there is an intervening taxable event in Tennessee (either after the tangible personal property was imported into the State or before property manufactured in Tennessee was exported from the State), Tennessee courts consistently hold that T.C.A. § 67-6-313(a) does not prohibit the Department of Revenue from taxing the transaction. On the other hand, Tennessee courts consistently hold that § 67-6-313(a) prohibits the Department from levying tax where no such intervening taxable event occurred in Tennessee. The manufactured-for-export exemption applies when tangible personal property is manufactured in Tennessee and exported for resale in another state. Conversely, when the tangible personal property is sold here, i.e., title transfers in Tennessee by operation of contract or otherwise, such sale constitutes a taxable event in Tennessee. Check Printers, Inc. v. Gerregano, — S.W.3d —, 2019 Tenn. App. LEXIS 326 (Tenn. Ct. App. June 28, 2019).

4. Goods Not Exempted.

Summary judgment as to the blow-in cards was improper as there was a dispute of fact as to whether the printer used its standard contract language, i.e., that title and risk of loss passed to the customer at the time the blow-in cards were tendered for shipping in Tennessee. Check Printers, Inc. v. Gerregano, — S.W.3d —, 2019 Tenn. App. LEXIS 326 (Tenn. Ct. App. June 28, 2019).

Other than the blow-in cards, the commercial printer's disputed products were taxable in Tennessee because under the printer's contract, title to the products transferred to the customer before they were shipped. Thus, there was an

intervening taxable event in Tennessee, i.e., a sale. Check Printers, Inc. v. Gerregano, — S.W.3d —, 2019 Tenn. App. LEXIS 326 (Tenn. Ct. App. June 28, 2019).

67-6-317. Public safety or public works-related goods sold to nonprofit property owners association.

(a) There is exempted from the sales and use tax imposed by this chapter any sales of public safety or public works-related goods to a nonprofit property owners association that has received a determination of exemption from the internal revenue service under the Internal Revenue Code § 501(c)(4) and that has more than one hundred (100) miles of roads maintained by the property owners association.

(b) Any exemption granted under subsection (a) only applies to sales made directly to the exempt property owners association. There is no exemption for sales made to an independent contractor with any such exempt association.

(c) No dealer shall sell, and no property owners association shall use, any tangible personal property under the claim that the tangible personal property is exempt from the sales or use tax levied by this chapter, where the exemption from taxation is claimed because the user is entitled to an exemption under subsection (a), unless the user has issued to it by the commissioner an exemption certificate declaring that such association is entitled to the exemption provided for by subsection (a). An association that has obtained an exemption certificate issued by the commissioner shall provide a dealer with a copy of the certificate of exemption, which must include the exemption account number included on the certificate issued by the commissioner. The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption.

(d) In the event a property owners association uses its exemption authorization to purchase other goods not exempted, the association shall be liable for applicable tax, penalty, and interest.

(e) The exemption granted under subsection (a) is limited to twenty-five thousand dollars ($25,000) in sales and use taxes each year that would otherwise be imposed.

(f) For purposes of this section, "public safety or public works-related goods" means equipment and supplies used:

(1) In the construction or maintenance of utilities, roads, culverts, curbs, sidewalks, parks, landscaping, docks and dock facilities, sewage and wastewater systems, and flood control and drainage systems, including storm water sewers and drains; and

(2) For firefighting, security, and emergency medical services, including fire alarm and emergency alert systems.

History.
Acts 2019, ch. 400, § 1.

Effective Dates.
Acts 2019, ch. 400, § 2. July 1, 2019.

67-6-318. Qualified building materials used in construction, expansion, or renovation of one or more qualified, new, or expanded warehouse or distribution facilities.

(a) Subject to the approval set forth in subdivision (c)(2), there is a sales and use tax exemption on qualified building materials used in the construction, expansion, or renovation of one (1) or more qualified, new, or expanded warehouse or distribution facilities as defined in § 67-6-102(46)(H); provided, that the taxpayer or a lessor, or both, makes a capital investment of at least one billion dollars ($1,000,000,000) in the construction or renovation of such facilities and related facilities at the same location within the qualified capital investment period.

(b) For purposes of this section:

(1) "Qualified building materials" means tangible personal property purchased during the period between July 1, 2019, and December 31, 2026, that becomes part of the real property comprising the facility; and

(2) "Qualified capital investment period" means a period beginning on or after January 1, 2019, and ending no later than December 31, 2026.

(c)(1) A taxpayer seeking the exemption provided under this section shall submit an application for exemption to the commissioner of revenue, describing the investment to be made during the qualified capital investment period. The application must be submitted on forms prescribed by the commissioner and demonstrate that the requirements of this section will be met.

(2) After approval of the exemption application, the commissioner shall issue a certificate of exemption to the taxpayer.

(d) If any requirements of this section are not met, the taxpayer is liable for any sales or use tax, penalty, or interest that would otherwise have been due with respect to items purchased on a tax-exempt basis pursuant to this section. Notwithstanding any other law to the contrary, the amount of any tax due under this subsection (d) must be assessed within three (3) years of December 31 of the final year of the investment period; provided, however, that such time to assess may be extended pursuant to § 67-1-1501(b)(5).

(e) An application with the department of revenue for the exemption provided in this section must be filed prior to October 1, 2019.

History.
Acts 2019, ch. 503, § 1.

Effective Dates.
Acts 2019, ch. 503, § 2. May 24, 2019.

67-6-322. Religious, educational, and charitable institutions — Energy resource recovery facilities.

(a) There is exempt from this chapter any sales or use tax upon tangible personal property, computer software, or taxable services sold, given, or donated to any:

(1) Church, temple, synagogue or mosque;

(2) University, including the Agricultural Foundation for Tennessee Tech, Inc.;

(3) College;

(4) School;

(5) Orphanage;

(6) Institution organized for the principal purpose of placing homeless children in foster homes;

(7) Home for the aged;

(8) Hospital;

(9) Girls' club;

(10) Boys' club;

(11) Community health council;

(12) Volunteer fire department;

(13) Organ bank for transplantable tissue;

(14) Organization whose primary objective is to promote the spiritual and recreational environment of members of the armed services of the United States, such as the United Service Organization as it is presently conducted;

(15) Historical property owned by the state and operated by the historical commission or under the jurisdiction of the commission as authorized by § 4-11-108;

(16) Nonprofit community blood bank;

(17) Senior citizen service centers that meet the standards set by the Tennessee commission on aging and disability for eligibility to receive state funds; or

(18) Nonprofit corporation whose primary function involves the annual organization, promotion, and sponsorship of a statewide talent and beauty pageant in which contestants compete for scholarships, awarded by such nonprofit corporation, as well as for the opportunity of being Tennessee's representative and contestant in an annual nationwide talent and beauty pageant with which such nonprofit corporation is affiliated.

(b) In addition to the exempt institutions, organizations and historical properties described in subsection (a), there are also exempt such other institutions and organizations that have received a determination of exemption from the internal revenue service under the Internal Revenue Code § 501(c)(3), (c)(5) labor organizations, (c)(13) not-for-profit cemetery companies, and (c)(19) (26 U.S.C. § 501(c)(3), (5), (13) and (19), respectively), and that are currently operating under it, and any war-time era veterans' organization that has received a determination of exemption from the internal revenue service under the Internal Revenue Code § 501(c)(4) (26 U.S.C. § 501(c)(4)), and that is chartered by the United States congress. The exemption provided for herein does not apply to purchases of bingo cards or equipment by such organizations.

(c) Any exemption granted under subsection (a) or (b) shall be limited to such institutions, organizations or historical properties that are not organized or operated for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(d) Any exemption granted under subsections (a)-(c) shall only apply to sales, gifts, or donations made directly to the exempt institution, organization or historical property. There shall be no exemption upon sales, gifts, or donations made to an independent contractor with any such exempt institution, organization or historical property.

(e) No dealer shall sell, give or donate, and no user shall use, any tangible personal property under the claim that the tangible personal property is

exempt from the sales or use tax levied by this chapter, where the exemption from taxation is claimed because the vendee or user is an educational, religious or charitable institution or organization or historical property and is entitled to an exemption as such institution or organization or historical property under subsections (a)-(d), unless the vendee or user shall have issued to it by the commissioner an exemption certificate declaring that such institution or organization or historical property is entitled to the exemption provided for by subsections (a)-(d); provided, that, in the case of a sale to a person who is not a resident or domiciliary of Tennessee, an exemption certificate issued by the commissioner is not required, if the dealer shall instead receive from such person a copy of a current and valid exemption from federal taxation under 26 U.S.C. § 501(c)(3). Persons who have obtained an exemption certificate issued by the commissioner shall provide their vendors with a copy of the certificate or a fully completed streamlined sales tax certificate of exemption, which must include the exemption account number included on the certificate issued by the commissioner. The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption. In the case of a sale to a person who is not a resident or domiciliary of Tennessee, an exemption certificate issued by the commissioner is not required, if the dealer shall instead receive from such person a copy of a current and valid exemption from federal taxation under 26 U.S.C. § 501(c)(3). The dealer shall maintain a copy of such exemption in the dealer's records to document that the purchaser was entitled to the exemption.

(f) The commissioner is authorized to make final determination after hearing, if demanded, as to whether any institution or organization or historical property is entitled to the benefit of the exemption established by subsections (a)-(d). The commissioner is authorized to issue exemption certificates to institutions and organizations and historical properties that, in the commissioner's judgment, are entitled thereto.

(g) No county having a metropolitan form of government is authorized under this chapter to levy any tax on the sale, purchase, use, consumption or distribution of steam and chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government.

(h) No tax exemption as permitted by this section applies to the purchase of bingo materials or supplies or equipment or cards.

(i) There is also exempt from this chapter any sales or use tax upon tangible personal property or taxable services sold, given, or donated to any Tennessee historic property preservation or rehabilitation entity as defined in § 67-4-2004. This exemption is subject to subsections (d), (e), and (f).

History.

Acts 1949, ch. 110, § 1; 1949, ch. 237, § 1; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1967, ch. 364, § 1; 1967, ch. 369, § 1; 1968, ch. 531, § 1; 1973, ch. 263, § 1; 1975, ch. 125, § 1; 1975, ch. 270, §§ 1, 2; 1975, ch. 290, § 1; 1976, ch. 619, § 1; 1976, ch. 684, § 1; 1976, ch. 791, § 1; 1977, ch. 97, §§ 1, 2; 1977, ch. 125, § 1; 1979, ch. 63, §§ 1-4; 1979, ch. 168, § 1; T.C.A. (orig. ed.), § 67-3014; Acts 1984, ch. 779, § 1; 1985, ch. 389, § 1; 1985, ch. 436, §§ 1-4; 1986, ch. 687, § 2; 1986, ch. 872, § 1; 1996, ch. 1001, § 1; 1997, ch. 212, § 1; 2003, ch. 357, § 43; 2004, ch. 812, § 2; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2005, ch. 499, § 4; 2007, ch. 602, §§ 51, 150; 2008, ch. 1106, § 10; 2009, ch. 530, § 35; 2010, ch. 1134, § 2; 2011, ch. 72, § 1.

Compiler's Notes.

The term "commission on aging and disabil-

ity" was substituted for "commission on aging" pursuant to Acts 2001, ch. 397.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 150; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-323. Tangible personal property, computer software, or services that are necessary to and primarily used for qualified production.

(a) For purposes of this section:

(1) "Applicant" means a person applying for an exemption under this section;

(2) "Best interests of the state" means a determination by the commissioners of revenue and economic and community development that the qualified production is a result of the exemption provided in this section and the benefits to the state resulting from the production outweigh the anticipated costs. In making this determination, the commissioners may consider the investment made, jobs created, impact to the community, and any other matters deemed appropriate by the commissioners;

(3) "Commission" means the Tennessee film, entertainment and music commission, created by § 4-3-5003;

(4) "Esports" means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in-person or online, for the purpose of ranking, prizes, money, or entertainment; and

(5) "Qualified production" means any of the following activities, as determined by the commission:

(A) The production of a film, pilot episode, series, esports event, or other episodic content in this state;

(B) The creation of computer-generated imagery, video games, or interactive digital media in this state; or

(C) Stand-alone audio or visual post-production scoring and editing in this state.

(b) The sale, use, storage, or consumption of tangible personal property, computer software, or services that are necessary to and primarily used for a qualified production are exempt from the tax imposed by this chapter, if the commissioner of revenue and the commissioner of economic and community development determine under the process set forth in subsection (c), in their sole discretion and in writing, that such an exemption is in the best interests of the state.

(c) Eligibility for the exemption set forth in subsection (b) is determined as follows:

(1) An applicant must apply to the commission, on a form prescribed by the commission, describing the basis for seeking an exemption under subsection (b), including the nature of the production activities involved;

(2) If the commission determines that the applicant is engaging in a qualified production, then the commission shall notify the applicant and the department of revenue of that determination, and the applicant may apply to the department of revenue for the exemption under subsection (b) on a

form prescribed by the department of revenue;

(3) The department of revenue shall not approve an application for the exemption under subsection (b) unless the commissioner of revenue and the commissioner of economic and community development each determine, in their sole discretion and in writing, that approving the exemption is in the best interests of the state.

(d) If the exemption is approved by the department of revenue, then the department of revenue shall issue a sales and use tax exemption certificate to the applicant that identifies the qualified production.

(e) A third party purchasing or using tangible personal property, computer software, or services that are necessary to and primarily used for a qualified production that is granted an exemption may separately apply to the department of revenue, on a form prescribed by the department of revenue, to use the exemption to make purchases on a tax-exempt basis for the identified qualified production. If the third party is approved by the department of revenue, then the department of revenue shall issue a sales and use tax exemption certificate to the third party that identifies the qualified production.

(f) An exemption certificate issued pursuant to this section expires two (2) years from its effective date. The person to whom the exemption certificate is granted may apply for renewals of the exemption certificate through the process described in subsections (c) and (e). For each renewal application granted, the department of revenue shall issue to the applicant a sales and use tax exemption certificate that expires two (2) years from its effective date.

History.
Acts 2021, ch. 70, § 1.

Effective Dates.
Acts 2021, ch. 70, § 3. July 1, 2021.

67-6-329. Miscellaneous exemptions. [Effective until October 1, 2021. See version effective on October 1, 2021.]

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

(1) "Gasoline" upon which a privilege tax per gallon is paid, and not refunded; except that premixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter;

(2) Motor fuel taxed per gallon by chapter 3, part 2 of this title;

(3) Textbooks and workbooks;

(4) All sales made to the state or any county or municipality within the state;

(5) Liquified gas and compressed natural gas taxed by chapter 3, part 11 of this title;

(6) Magazines and books that are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in this state are those activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of the magazines or books, or the maintenance of raw materials with respect to those activities, notwithstanding that the seller or distributor maintains

employees in the state solely in connection with the production and quality control of the printing, storage, labeling and/or delivery, or in connection with news gathering and reporting;

(7) Parking privileges sold by colleges, universities, technical institutes or state colleges of applied technology to students at those institutions;

(8) Materials used for the lining or protective coating of railroad tank cars and any charges made for the installation or repair of the linings or protective coatings;

(9) Chemicals and supplies used in air or water pollution control facilities for pollution control purposes;

(10) Periodicals printed entirely on newsprint or bond paper and distributed no less frequently than monthly and advertising supplements or other printed matter distributed with the periodicals;

(11) The sale of United States and Tennessee flags sold by a nonprofit organization;

(12) Industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where the industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, or sizing;

(13) Materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when the property is either sold in the containers, sacks, bags or bottles directly to the consumer or when such use is incidental to the sale of the property for resale;

(14) Film, including negatives, used in the business of printing, or provided to a business of printing to obtain the services of the business; or typesetting used in the business of printing and materials necessary for the typesetting, or typesetting, or materials necessary for typesetting provided to a business of printing to obtain the services of the business;

(15) Home communication terminals, remote control devices, and other similar equipment purchased on or after January 1, 2000, by a video programming service provider and held for sale or lease to its subscribers;

(16) Utility poles, anchors, guys, and conduits;

(17) Aircraft used for and owned by a person providing flight training;

(18) Prepared food, as defined in § 67-6-102, when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12). This subdivision (a)(18) shall not be interpreted to exempt a public or private school or school support group from paying sales or use taxes on the purchase price of prepared food or food and food ingredients, as defined by § 67-6-102, purchased for resale by the school or a school support group at fund raisers, sports events and the like pursuant to § 67-6-229, or to exempt sales from any vending machine, including vending machines located on the premises of public or private schools, from the sales tax;

(19) Copies of hospital records, as defined in § 68-11-302, sold or otherwise provided to an attorney, agent or other authorized representative acting in a lawsuit on behalf of any hospital that has received a determination of exemption as provided in § 67-6-322(e);

(20) OEM headquarters company vehicles; and

(21) Online access to continuing education courses that meet regulatory requirements for licensed individuals and that are offered by organizations that have received a determination of exemption from the internal revenue service, pursuant to 26 U.S.C. § 501(c)(3) or (c)(6).

(b) Charges for the following services are exempt from the tax imposed by this chapter:

(1) Coin-operated telephone service;

(2) Automatic teller machine (ATM) service. The seller of the ATM service shall be deemed the user and consumer of telecommunication services necessary to deliver the ATM service; and

(3) Wire transfer or other services provided by any corporation defined as a financial institution under § 67-4-2004. The seller of the wire transfer or other services shall be deemed the user and consumer of telecommunication services necessary to deliver the wire transfer service.

(c) No provision of this section shall be construed to amend or repeal § 67-6-301.

(d) The sale at retail, use, consumption, distribution and storage for use or consumption in this state of the following specified digital goods is specifically exempted from the tax imposed by this chapter:

(1) Any specified digital good, if the sale, lease, licensing and use of the equivalent in a tangible form is exempt from taxation under this chapter; and

(2) Specified digital goods provided without charge for less than permanent use.

History.

Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976, ch. 466, § 2; 1976, ch. 524, § 1; 1976, ch. 689, § 1; 1976, ch. 711, § 1; 1976, ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978, ch. 732, § 1; 1978, ch. 733, § 1; impl. am. Acts 1978, ch. 761, § 116; Acts 1978, ch. 793, § 1; 1978, ch. 831, § 1; 1978, ch. 832, § 1; 1978, ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980, ch. 613, § 1; 1980, ch. 748, § 1; 1980, ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982, ch. 576, § 1; 1982, ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012; Acts 1984, ch. 734, § 1; 1984, ch. 761, § 2; 1985, ch. 25, §§ 1, 5, 7; 1985, ch. 332, §§ 1, 2; 1985, ch. 352, §§ 1-3; 1986, ch. 517, § 1; 1986, ch. 565, §§ 1-3; 1987, ch. 32, § 1; 1987, ch. 255, § 1; 1987, ch. 416, § 1; 1988, ch. 561, § 1; 1989, ch. 478, § 1; 1990, ch. 856, § 1; 1990, ch. 1091, § 3; 1991, ch. 41, § 1; 1991, ch. 488, § 1; 1992, ch. 659, § 1; 1993, ch. 2, § 1; 1993, ch. 409, § 3; 1995, ch. 229, § 1; 1995, ch. 256, § 1; 1995, ch. 343, § 1; 1996, ch. 1003, § 1; 1998, ch. 694, § 2; 2003, ch. 357, §§ 44-48; 2004, ch. 782, § 10; 2004, ch. 959, §§ 14-16, 68; 2005, ch. 311, §§ 1, 2; 2005, ch. 499, §§ 21, 51, 70, 71; 2007, ch. 602, §§ 51, 93, 94, 151; 2008, ch. 1106, §§ 13, 20; 2009, ch. 530, §§ 35, 115; 2011, ch. 72, § 1; 2013, ch. 473, § 26; 2014, ch. 908, § 11; 2016, ch. 1070, § 1; 2019, ch. 473, § 1; 2021, ch. 139, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 151; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment substituted "and distributed no less frequently than monthly" for "and regularly distributed twice monthly, or on a biweekly or more frequent basis," in (a)(10).

The 2021 amendment added (a)(21).

Effective Dates.
Acts 2019, ch. 473, § 2. July 1, 2019.
Acts 2021, ch. 139, § 2. July 1, 2021.

NOTES TO DECISIONS

5. Sale-for-resale Exemption.
Sale-for-resale tax exemption, T.C.A. § 67-6-329(a)(12), did not apply to a commercial printer's sale of blow-in cards as the insertion of the cards, which were meant to be removed, filled out, and returned to the magazines, into the finished magazines did not constitute integration as a component part of the magazines. Check Printers, Inc. v. Gerregano, — S.W.3d —, 2019 Tenn. App. LEXIS 326 (Tenn. Ct. App. June 28, 2019).

67-6-329. Miscellaneous exemptions. [Effective on October 1, 2021. See version effective until October 1, 2021.]

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

(1) "Gasoline" upon which a privilege tax per gallon is paid, and not refunded; except that premixed engine fuel containing gasoline and oil, produced for use in two-cycle engines and not for use in the propulsion of an aircraft, vessel or any other vehicle, that is sold in containers of one gallon (1 gal.) or less, is not exempt from the tax imposed by this chapter;

(2) Motor fuel taxed per gallon by chapter 3, part 2 of this title;

(3) Textbooks and workbooks;

(4) All sales made to the state or any county or municipality within the state;

(5) Liquified gas and compressed natural gas taxed by chapter 3, part 11 of this title;

(6) Magazines and books that are distributed and sold to consumers by United States mail or common carrier, where the only activities of the seller or distributor in this state are those activities having to do with the printing, storage, labeling and/or delivery to the United States mail or common carrier of the magazines or books, or the maintenance of raw materials with respect to those activities, notwithstanding that the seller or distributor maintains employees in the state solely in connection with the production and quality control of the printing, storage, labeling and/or delivery, or in connection with news gathering and reporting;

(7) Parking privileges sold by colleges, universities, technical institutes or state colleges of applied technology to students at those institutions;

(8) Materials used for the lining or protective coating of railroad tank cars and any charges made for the installation or repair of the linings or protective coatings;

(9) Chemicals and supplies used in air or water pollution control facilities for pollution control purposes;

(10) Periodicals printed entirely on newsprint or bond paper and distributed no less frequently than monthly and advertising supplements or other printed matter distributed with the periodicals;

(11) The sale of United States and Tennessee flags sold by a nonprofit organization;

(12) Industrial materials and explosives for future processing, manufacture or conversion into articles of tangible personal property for resale where the industrial materials and explosives become a component part of the finished product or are used directly in fabricating, dislodging, or sizing;

(13) Materials, containers, labels, sacks, bags or bottles used for packaging tangible personal property when the property is either sold in the containers, sacks, bags or bottles directly to the consumer or when such use is incidental to the sale of the property for resale;

(14) Film, including negatives, used in the business of printing, or provided to a business of printing to obtain the services of the business; or typesetting used in the business of printing and materials necessary for the typesetting, or typesetting, or materials necessary for typesetting provided to a business of printing to obtain the services of the business;

(15) Home communication terminals, remote control devices, and other similar equipment purchased on or after January 1, 2000, by a video programming service provider and held for sale or lease to its subscribers;

(16) Utility poles, anchors, guys, and conduits;

(17) Aircraft used for and owned by a person providing flight training;

(18) Prepared food, as defined in § 67-6-102, when sold pursuant to programs authorized by a federal, state or local government entity or by the school governing body, that provide meals for public or private school students in grades kindergarten through twelve (K-12). This subdivision (a)(18) shall not be interpreted to exempt a public or private school or school support group from paying sales or use taxes on the purchase price of prepared food or food and food ingredients, as defined by § 67-6-102, purchased for resale by the school or a school support group at fund raisers, sports events and the like pursuant to § 67-6-229, or to exempt sales from any micro market or vending machine, including micro markets and vending machines located on the premises of public or private schools, from the sales tax;

(19) Copies of hospital records, as defined in § 68-11-302, sold or otherwise provided to an attorney, agent or other authorized representative acting in a lawsuit on behalf of any hospital that has received a determination of exemption as provided in § 67-6-322(e);

(20) OEM headquarters company vehicles; and

(21) Online access to continuing education courses that meet regulatory requirements for licensed individuals and that are offered by organizations that have received a determination of exemption from the internal revenue service, pursuant to 26 U.S.C. § 501(c)(3) or (c)(6).

(b) Charges for the following services are exempt from the tax imposed by this chapter:

(1) Coin-operated telephone service;

(2) Automatic teller machine (ATM) service. The seller of the ATM service shall be deemed the user and consumer of telecommunication services necessary to deliver the ATM service; and

(3) Wire transfer or other services provided by any corporation defined as a financial institution under § 67-4-2004. The seller of the wire transfer or other services shall be deemed the user and consumer of telecommunication services necessary to deliver the wire transfer service.

(c) No provision of this section shall be construed to amend or repeal § 67-6-301.

(d) The sale at retail, use, consumption, distribution and storage for use or consumption in this state of the following specified digital goods is specifically exempted from the tax imposed by this chapter:

(1) Any specified digital good, if the sale, lease, licensing and use of the equivalent in a tangible form is exempt from taxation under this chapter; and

(2) Specified digital goods provided without charge for less than permanent use.

History.

Acts 1947, ch. 3, § 6; 1949, ch. 245, § 2; C. Supp. 1950, § 1248.61 (Williams, § 1328.27); Acts 1955, ch. 51, § 6; 1955, ch. 194, § 1; 1955, ch. 340, §§ 1, 2; 1961, ch. 248, § 1; 1963, ch. 38, § 4; 1963, ch. 112, § 1; 1963, ch. 137, § 1; 1963, ch. 268, § 1; 1965, ch. 32, § 1; 1965, ch. 164, § 1; 1967, ch. 98, § 1; 1969, ch. 2, § 1; 1971, ch. 39, § 1; 1971, ch. 113, § 1; 1971, ch. 258, § 1; 1973, ch. 173, § 1; 1976, ch. 466, § 2; 1976, ch. 524, § 1; 1976, ch. 689, § 1; 1976, ch. 711, § 1; 1976, ch. 733, § 1; 1977, ch. 79, § 1; 1977, ch. 150, § 1; 1977, ch. 268, § 1; 1977, ch. 487, § 1; 1978, ch. 732, § 1; 1978, ch. 733, § 1; impl. am. Acts 1978, ch. 761, § 116; Acts 1978, ch. 793, § 1; 1978, ch. 831, § 1; 1978, ch. 832, § 1; 1978, ch. 921, § 4; 1979, ch. 191, § 1; 1979, ch. 239, § 1; 1979, ch. 330, § 1; 1979, ch. 338, § 1; 1979, ch. 349, § 1; 1979, ch. 387, § 1; 1979, ch. 391, §§ 1, 2; 1980, ch. 613, § 1; 1980, ch. 748, § 1; 1980, ch. 863, § 1; 1981, ch. 70, § 1; 1981, ch. 133, § 1; 1981, ch. 273, § 1; 1982, ch. 576, § 1; 1982, ch. 634, § 1; 1983, ch. 102, § 3; 1983, ch. 140, § 1; 1983, ch. 162, § 2; T.C.A. (orig. ed.), § 67-3012; Acts 1984, ch. 734, § 1; 1984, ch. 761, § 2; 1985, ch. 25, §§ 1, 5, 7; 1985, ch. 332, §§ 1, 2; 1985, ch. 352, §§ 1-3; 1986, ch. 517, § 1; 1986, ch. 565, §§ 1-3; 1987, ch. 32, § 1; 1987, ch. 255, § 1; 1987, ch. 416, § 1; 1988, ch. 561, § 1; 1989, ch. 478, § 1; 1990, ch. 856, § 1; 1990, ch. 1091, § 3; 1991, ch. 41, § 1; 1991, ch. 488, § 1; 1992, ch. 659, § 1; 1993, ch. 2, § 1; 1993, ch. 409, § 3; 1995, ch. 229, § 1; 1995, ch. 256, § 1; 1995, ch. 343, § 1; 1996, ch. 1003, § 1; 1998, ch. 694, § 2; 2003, ch. 357, §§ 44-48; 2004, ch. 782, § 10; 2004, ch. 959, §§ 14-16, 68; 2005, ch. 311, §§ 1, 2; 2005, ch. 499, §§ 21, 51, 70, 71; 2007, ch. 602, §§ 51, 93, 94, 151; 2008, ch. 1106, §§ 13, 20; 2009, ch. 530, §§ 35, 115; 2011, ch. 72, § 1; 2013, ch. 473, § 26; 2014, ch. 908, § 11; 2016, ch. 1070, § 1; 2019, ch. 473, § 1; 2021, ch. 139, § 1; 2021, ch. 289, § 3.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 151; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment substituted "and distributed no less frequently than monthly" for "and regularly distributed twice monthly, or on a biweekly or more frequent basis," in (a)(10).

The 2021 amendment by ch. 139, added (a)(21).

The 2021 amendment by ch. 289, in (a)(18), substituted "from any micro market or vending machine" for "from any vending machine" and "including micro markets and vending machines" for "including vending machines".

Effective Dates.

Acts 2019, ch. 473, § 2. July 1, 2019.

Acts 2021, ch. 139, § 2. July 1, 2021.

Acts 2021, ch. 289, § 6. October 1, 2021.

NOTES TO DECISIONS

5. Sale-for-resale Exemption.

Sale-for-resale tax exemption, T.C.A. § 67-6-329(a)(12), did not apply to a commercial printer's sale of blow-in cards as the insertion of the cards, which were meant to be removed, filled out, and returned to the magazines, into the finished magazines did not constitute integration as a component part of the magazines. Check Printers, Inc. v. Gerregano, — S.W.3d —, 2019 Tenn. App. LEXIS 326 (Tenn. Ct. App. June 28, 2019).

67-6-330. Amusement tax exemptions.

(a) There is exempt from the sales tax on admission, dues or fees imposed by § 67-6-212:

(1) Events or activities held for or sponsored by public or private schools, kindergarten through grade twelve (K-12);

(2) The sales price of admissions to county or agricultural fairs and any dues, fees or charges that enable or entitle the entrant to engage in any otherwise taxable amusement activity held therein, including games, rides, shows, contests, or grandstand events;

(3) Membership application fees, dues or contributions, except that portion attributable to admission prices, paid to institutions and organizations that have received a determination of exemption from the internal revenue service, pursuant to 26 U.S.C. § 501(c)(3), (8) and (19) and that are currently operating under such exemption;

(4) Membership fees or dues of those organizations listed in Major Group No. 86 of the Standard Industrial Classification Manual of 1972, as amended, prepared by the office of management and budget of the federal government;

(5)(A) The sales price of admissions to amusement or recreational activities conducted, produced, or provided by:

(i) Not-for-profit museums, not-for-profit entities that operate historical sites and not-for-profit historical societies, organizations or associations;

(ii) Organizations that have received and currently hold a determination of exemption from the internal revenue service, pursuant to 26 U.S.C. § 501(c);

(iii) Organizations listed in Major Group No. 86 of the Standard Industrial Classification Manual of 1972, as amended, prepared by the office of management and budget of the federal government; or

(iv) Tennessee historic property preservation or rehabilitation entities, as defined in § 67-4-2004;

(B) The exemption provided for in this subdivision (a)(5) shall not apply unless such entities, societies, associations or organizations promote, produce and control the entire production or function;

(6) Fees in any form resulting from the production of television, film, radio or theatrical presentations. This exemption shall not include any dues, fees or other charges made on or for the admission of the public to such presentations;

(7) Events or activities conducted upon rivers and waterways in this state whose continued use for recreational purposes is contingent upon revenue produced pursuant to agreements entered into between the state of Tennessee and the federal government, or an agency thereof, which agreements provide for the establishment of a trust fund for such purposes; provided, that this exemption shall prevail only if the annual distribution of funds to the state from such trust fund exceeds that amount of revenue to the state that would otherwise be produced if the amusement tax under § 67-6-212 were imposed on such events or activities, as determined by the fiscal review

committee;

(8) All sales contractually committed and/or for which money has been paid prior to June 1, 1984;

(9) Athletic events for participants under eighteen (18) years of age sponsored by civic or not-for-profit organizations;

(10) The sales price of admissions to amusement or recreational activities or facilities conducted, produced and controlled by municipalities or counties;

(11) Membership assessments for capital improvements made by a recreation club, community service organization or country club against its members;

(12) The sales price of admissions to beauty pageants or rodeos and any fees, charges or rental fees that entitle or enable the entrant to engage in any otherwise taxable amusement activity held therein that are conducted, produced or provided by a nonprofit civic organization; provided, that this exemption only applies to beauty pageants or rodeos that have been held in the same city for thirty (30) years or longer;

(13) The sales price of admissions to musical concerts conducted, produced or provided by not-for-profit community group associations, if such associations promote, produce and control such concerts;

(14) Any event or activity held by an employer solely for the benefit of the employer's employees; provided, that such event or activity must be entirely produced and controlled by such employer;

(15) Fishing tournament registration fees collected from tournament participants;

(16) Admission, dues, fees, or other charges paid to any person principally engaged in offering services or facilities for the development or preservation of physical fitness through exercise or other active physical fitness conditioning. This exemption shall apply to services and facilities such as gyms, fitness centers, fitness studios, high intensity interval training, cross training, ballet barre, pilates, yoga, spin classes, aerobics classes, and other substantially similar services and facilities that principally provide for exercise or other active physical fitness conditioning. This exemption shall not apply to persons principally engaged in offering recreational activities such as country clubs, tennis clubs, golf courses, and other substantially similar recreational facilities and activities;

(17) Any entry fee or charge that allows an entrant to participate in a contest or tournament or charity horse show;

(18) Charges made by landowners for permission to hunt native wildlife on their property that is located partially or entirely in a county having a population of not less than thirty-one thousand nine hundred (31,900) nor more than thirty-two thousand (32,000), according to the 1980 federal census or any subsequent federal census; and

(19) The fee paid by an establishment operated primarily for the sale of prepared food to one (1) or more persons for the purpose of providing live entertainment to the patrons of such establishment.

(b) The exemptions provided in subdivisions (a)(6) and (11) do not apply to interscholastic sports held or sponsored by private or public colleges or universities.

History.

Acts 1984 (Ex. Sess.), ch. 13, § 6; 1985, ch. 452, §§ 1-6, 8, 10-13; 1985, ch. 456, § 2; 1986, ch. 520, § 1; 1986, ch. 936, §§ 1, 2; 1987, ch. 44, § 1; 1988, ch. 958, § 4; 1989, ch. 126, § 1; 1989, ch. 527, § 1; 1990, ch. 965, §§ 1-3; 1991, ch. 200, §§ 1, 3; 1992, ch. 872, § 2; 1993, ch. 231, § 1; 2003, ch. 357, §§ 49, 50; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2005, ch. 499, § 5; 2007, ch. 602, §§ 51, 95, 152; 2008, ch. 1106, §§ 2, 3; 2019, ch. 159, § 1.

Amendments.

The 2019 amendment rewrote (a)(16), which read: "(16)(A) Dues, membership application fees, admission fees, contributions or rental charges for equipment paid to any corporation or enterprise that offers, on a regular, full-time basis, services or facilities for the development or preservation of physical fitness through exercise or athletics; provided, that such corporation or enterprise claiming this exemption, in order to qualify for such exemption, must:

"(i) Have at least one (1) full-time employee certified in administering health assessments, or at least one (1) full-time employee licensed by the state that represents a medical and/or paramedical discipline;

"(ii) Be open at least seventy (70) hours per week;

"(iii) Permit participation by each member each day in operation;

"(iv) Have at least fifteen thousand square feet (15,000 sq. ft.) in use for physical fitness purposes; and

"(v) Offer three (3) or more of the following programs and/or activities:

"(*a*) Health assessments that include blood chemistry and urinalysis;

"(*b*) Racquetball;

"(*c*) Exercise equipment;

"(*d*) Track or swimming; and

"(*e*) Aerobics.

"(B) Before any corporation or enterprise can be exempted under this subdivision (a)(16), the department of revenue shall, based upon information supplied by the person claiming such exemption, approve such exemption. The exemption provided in this subdivision (a)(16) shall not apply, however, to establishments listed under Industry 7992 and Industry 7997 of the Standard Industrial Classification Index of 1987, prepared by the office of management and budget of the federal government;".

Effective Dates.

Acts 2019, ch. 159, § 2. July 1, 2019.

67-6-349. Petroleum products sold to air common carriers for flights outside United States.

(a) There is exempt from the tax imposed by this chapter fuel and petroleum products sold to or used by an air common carrier, certified by the carrier to be used for consumption, shipment or storage in the conduct of its business as an air common carrier for a flight destined for or continuing from a location outside the United States.

(b)(1) If a dealer pays to the department the tax imposed by this chapter on fuel or petroleum products sold to an air common carrier, and if the fuel or petroleum products are subsequently used by the air common carrier in a manner that renders the product exempt from tax under subsection (a), then the dealer may take a credit equal to the amount of tax previously paid to the department, if all of the following conditions are satisfied:

(A) Prior to taking the credit, the dealer must give the air common carrier a credit or refund of any tax collected from the air common carrier that is the basis for the credit taken under this subsection (b);

(B) The dealer must obtain documentation from the air common carrier that is sufficient to establish that the fuel or petroleum products were used in an exempt manner as provided in subsection (a); and

(C) The credit is taken by the dealer on a return filed pursuant to this chapter within one (1) year of the date the tax was paid to the department.

(2) The dealer must maintain documentation that is sufficient to establish entitlement to the credit, and the documentation must be maintained for a period of three (3) years from December 31 of the year in which the credit is taken on the return. Nothing in this subsection (b) shall be construed as preventing the dealer from filing a claim for refund pursuant to § 67-1-1802

in lieu of taking a credit on the tax return; provided, however, that in no case shall the same tax be subject to a refund and a credit.

History.

Acts 1994, ch. 791, § 1; 2004, ch. 959, § 66; 2005, ch. 311, § 2; 2007, ch. 602, §§ 52, 153; 2009, ch. 530, §§ 35, 45, 57; 2011, ch. 72, §§ 1, 11; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; 2019, ch. 157, § 1.

Compiler's Notes.

This section was to be repealed effective July 1, 2021, by Acts 2007, ch. 602, § 153; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Effective Dates.

Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

67-6-385, 67-6-386. [Repealed.]

Compiler's Notes.

§§ 67-6-385 and 67-6-386 were enacted effective July 1, 2021, by Acts 2007, ch. 602, § 154; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, these sections never took effect.

67-6-393. Exemption for sales tax holiday.

(a) Any exemption provided by this section shall be known as a "sales tax holiday."

(b)(1) There is exempt from the tax imposed by this chapter the following items of tangible personal property, if sold between 12:01 a.m. on the last Friday of July and 11:59 p.m. the following Sunday:

(A) Clothing with a sales price of one hundred dollars ($100) or less per item;

(B) School supplies with a sales price of one hundred dollars ($100) or less per item;

(C) School art supplies with a sales price of one hundred dollars ($100) or less per item; and

(D) Computers with a sales price of one thousand five hundred dollars ($1,500) or less per item.

(2) The exemption provided by this subsection (b) does not apply to the following:

(A) Computer software;

(B) Clothing accessories or equipment;

(C) Protective equipment;

(D) Sport or recreational equipment;

(E) School instructional material;

(F) School computer supplies;

(G) Any item for use in a trade or business;

(H) The lease or rental of any item; or

(I) Video game consoles.

(c) Each retailer making exempt sales under this section shall report the amount of such sales to the commissioner on the retailer's sales and use tax returns.

(d) The exemption provided in this section shall be subject to the following provisions:

(1) **Layaway Sales.** A sale of eligible property under a layaway sale qualifies for exemption, if:

(A) Final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or

(B) The purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period;

(2) **Coupons and Discounts.** A discount by the seller reduces the sales price of the property and the discounted sales price determines whether the sales price is within a sales tax holiday price threshold. A coupon that reduces the sales price is treated as a discount, if the seller is not reimbursed for the coupon amount by a third party. If a discount applies to the total amount paid by a purchaser, rather than to the sales price of a particular item, and the purchaser has purchased both eligible property and taxable property, the seller should allocate the discount based on the total sales price of the taxable property compared to the total sales price of all property sold in that same transaction;

(3) **Splitting of Items Normally Sold Together.** Articles that are normally sold as a single unit must continue to be sold in that manner. Such articles cannot be priced separately and sold as individual items in order to obtain the exemption. For example, each shoe of a pair of shoes cannot be sold separately so that the sales price of each shoe is within a sales tax holiday price threshold;

(4) **Rain Checks.** A rain check allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock. Eligible property that customers purchase during the exemption period with use of a rain check shall qualify for the exemption, regardless of when the rain check was issued. Issuance of a rain check during the exemption period shall not qualify eligible property for the exemption, if the property is actually purchased after the exemption period;

(5) **Exchanges.** The procedure for an exchange regarding a sales tax holiday is as follows:

(A) If a customer purchases an item of eligible property during the exemption period, but later exchanges the item for a similar eligible item, even if a different size, different color, or other feature, no additional tax is due, even if the exchange is made after the exemption period;

(B) If a customer purchases an item of eligible property during the exemption period, but after the exemption period has ended, the customer returns the item and receives credit on the purchase of a different item, the appropriate sales tax is due on the sale of the newly purchased item; and

(C) If a customer purchases an item of eligible property before the exemption period, but during the exemption period the customer returns the item and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item, if the new item is purchased during the exemption period;

(6) **Delivery Charges.** Delivery charges, including shipping, handling and service charges, are part of the sales price of eligible property. For the

purpose of determining a sales tax holiday price threshold, if all the property in a shipment qualifies as eligible property and the sales price for each item in the shipment is within the sales tax holiday price threshold, then the seller does not have to allocate the delivery, handling, or service charge to determine if the price threshold is exceeded. The shipment shall be considered a sale of eligible products. If the shipment includes eligible property and taxable property, including an eligible item with a sales price in excess of the price threshold, the seller should allocate the delivery charge by using:

(A) A percentage based on the total sales prices of the taxable property compared to the total sales prices of all property in the shipment; or

(B) A percentage based on the total weight of the taxable property compared to the total weight of all property in the shipment. The seller shall tax the percentage of the delivery charge allocated to the taxable property, but does not have to tax the percentage allocated to the eligible property;

(7) **Order Date and Back Orders.** For the purpose of a sales tax holiday, eligible property qualifies for exemption, if:

(A) The item is both delivered to and paid for by the customer during the exemption period; or

(B) The customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment, notwithstanding that the shipment may be delayed because of a backlog of orders, or because stock is currently unavailable to, or on back order by, the seller;

(8) **Returns.** For a sixty-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given, unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This sixty-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that shows that sales tax was paid on returned merchandise. The sixty-day period is not intended to change a seller's policy on the time period during which the seller will accept returns; and

(9) **Different Time Zones.** The time zone of the seller's location determines the authorized time period for a sales tax holiday, when the purchaser is located in one time zone and a seller is located in another.

(e) For purposes of subsection (d), "eligible property" means an item of a type, such as clothing, that qualifies for exemption under this section.

(f)(1) Notwithstanding subsection (b), there is exempt from the tax imposed by this chapter the following items of tangible personal property, if sold between 12:01 a.m. on Friday, July 31, 2020, and 11:59 p.m. on Sunday, August 2, 2020:

(A) Clothing with a sales price of two hundred dollars ($200) or less per item;

(B) School supplies with a sales price of two hundred dollars ($200) or less per item;

(C) School art supplies with a sales price of two hundred dollars ($200) or less per item; and

(D) Electronic devices, including, but not limited to, computers and televisions, with a sales price of three thousand dollars ($3,000) or less per item.

(2) The exemption provided by this subsection (f) does not apply to the following:

(A) Computer software;

(B) Clothing accessories or equipment;

(C) Protective equipment;

(D) Sport or recreational equipment;

(E) School instructional material;

(F) School computer supplies;

(G) Any item for use in a trade or business; or

(H) The lease or rental of any item.

(g) There is exempt from the tax imposed by this chapter the retail sale of food and drink by restaurants and limited service restaurants, as defined in § 57-4-102, if sold between 12:01 a.m. on Friday, August 7, 2020, and 11:59 p.m. on Sunday, August 9, 2020.

(h)(1) There is exempt from the tax imposed by this chapter the retail sale of food and food ingredients, as defined in § 67-6-102, if sold between 12:01 a.m. on Friday, July 30, 2021, and 11:59 p.m. on Thursday, August 5, 2021.

(2) There is exempt from the tax imposed by this chapter the retail sale of prepared food, as defined in § 67-6-102, but excluding alcoholic beverages, if sold between 12:01 a.m. on Friday, July 30, 2021, and 11:59 p.m. on Thursday, August 5, 2021. For purposes of this subdivision (h)(2), such prepared food qualifies for exemption if delivered or served during the exemption period and paid for by the customer either during or prior to the exemption period, notwithstanding subdivision (d)(7) to the contrary.

(i)(1) There is exempt from the tax imposed by this chapter the retail sale of gun safes and gun safety devices, if sold between 12:01 a.m. on July 1, 2021, and 11:59 p.m. on June 30, 2022.

(2) For purposes of this subsection (i):

(A) "Gun safe" means a locking container or other enclosure equipped with a padlock, key lock, combination lock, or other locking device that is designed and intended for the secure storage of one (1) or more firearms; and

(B) "Gun safety device" means any integral device to be equipped or installed on a firearm that permits a user to program the firearm to operate only for specified persons designated by the user through computerized locking devices or other means integral to and permanently part of the firearm.

History.

Acts 2005, ch. 398, § 1; 2006, ch. 1019, § 60; 2007, ch. 534, §§ 1, 2; 2007, ch. 602, § 101; 2008, ch. 617, § 1; 2015, ch. 123, § 4; 2016, ch. 1048, § 1; 2020, ch. 759, §§ 15, 16; 2021, ch. 456, § 1; 2021, ch. 592, § 1.

Amendments.

The 2020 amendment substituted "Any exemption" for "The exemption" in (a); redesignated the former second sentence of (a) as present (b)(1); redesignated former (a)(1) – (a)(4) as present (b)(1)(A) – (b)(1)(D); redesignated former (b) as present (b)(2) and substituted "subsection (b)" for "section"; redesignated former (b)(1) – (b)(9) as present (b)(2)(A) – (b)(2)(I); and added (f) and (g).

The 2021 amendment by ch. 456 added (h).

The 2021 amendment by ch. 592 added (i).

Effective Dates.

Acts 2020, ch. 759, § 18. June 30, 2020.

Acts 2021, ch. 456, § 3. July 1, 2021.

Acts 2021, ch. 592, § 2. May 27, 2021.

PART 4

ADMINISTRATIVE PROVISIONS

67-6-402. Rules and regulations.

Attorney General Opinions.

An online marketplace facilitator, who engages in the regular, systematic solicitation of a consumer market in Tennessee, is a dealer if it consummates the sales transactions with those consumers. The Department of Revenue is empowered to promulgate rules requiring online marketplace facilitators to collect and remit sales tax on behalf of out-of-state dealers, provided the facilitators themselves are not out-of-state dealers. OAG 19-03, 2019 Tenn. AG LEXIS 3 (3/12/2019).

67-6-407. Dealers of aviation fuel — Reports.

(a) The commissioner shall require each dealer of aviation fuel to file an additional report stating the total amount in gallons of aviation fuel sold and the dollar amount collected from such sales. The report required by this section shall be filed on a monthly or quarterly basis, as determined by the commissioner in the commissioner's discretion. Such report shall be filed no later than thirty (30) days after the last day of the sales period covered by the report. The report shall be supplemental to any other report required by the department and shall be on a form prescribed by the department.

(b) In addition to any other penalty provided by law, the commissioner is authorized to assess any taxpayer required to file the report described in subsection (a) a civil penalty of five hundred dollars ($500) for failure to file such report. Such penalty shall be subject to waiver under § 67-1-803.

History.

Acts 1989, ch. 348, § 1; 2004, ch. 959, § 67; 2005, ch. 311, § 2; 2007, ch. 602, §§ 52, 156; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2011, ch. 194, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 156; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-408. Transportation equity trust fund — Commissioners' annual report.

On or before December 31 each year, the commissioners of revenue and transportation shall jointly publish and provide to the governor and to each member of the general assembly a report that summarizes the amount and

source of all moneys received and deposited during the preceding fiscal year in the transportation equity fund, created pursuant to § 67-6-103(b). The report shall also include the following information:

(1) The total amount of moneys received under this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for aviation;

(2) The total amount of moneys received under this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for railways;

(3) The total amount of moneys received under this chapter from the sale, use, consumption, distribution, or storage for use or consumption of fuels used for water carriers;

(4) The portion of the transportation equity trust fund used by the department of transportation for railway-related programs and activities, including a brief description of each such program and activity receiving such funding;

(5) The portion of the transportation equity trust fund used by the department of transportation for aeronautics-related programs and activities, including a brief description of each such program and activity receiving such funding; and

(6) The portion of the transportation equity trust fund used by the department of transportation for waterways-related programs and activities, including a brief description of each such program and activity receiving such funding.

History.

Acts 1989, ch. 348, § 2; 2004, ch. 959, § 18; 2005, ch. 311, § 2; 2007, ch. 602, §§ 52, 157; 2009, ch. 530, § 35; 2011, ch. 72, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 157; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-410. Information report of sales of beer, tobacco products, or other types of tangible personal property.

(a)(1) The commissioner is authorized to require persons selling beer, as defined in § 57-5-101, and persons selling tobacco products, as defined in § 67-4-1001, to retailers of such products to file an information report of such sales with the department. Nothing shall prevent a seller from including in its report sales of tangible personal property that are not otherwise required by this section.

(2) The commissioner is authorized to require each tobacco product manufacturer, as defined in § 47-31-102, whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, to file an information report related to tobacco buydown payments, as defined in § 67-6-357, received by retailers from the tobacco product manufacturer.

(3) **[Expires on July 1, 2022. See (a)(3)(C).]** (A) The commissioner is authorized to require persons selling food, candy, or nonalcoholic bever-

ages, including bottled soft drinks, to retailers of such products to file an information report of such net sales with the department. For purposes of this subdivision (a)(3):

(i) "Bottled soft drinks" has the same meaning as defined in § 67-4-402;

(ii) "Candy" has the same meaning as defined in § 67-6-102;

(iii) "Food" and "nonalcoholic beverages" includes the items described in the definition of "food and food ingredients" in § 67-6-102 except for the following, which shall not be required for purposes of this section: perishable grocery items such as fruits, vegetables, deli meat, deli cheese, deli salads, and other deli products; fresh meats; refrigerated meats; frozen meats; frozen dinners, entrees, and meals; frozen pizza; or other frozen foods; and

(iv) "Net sales" means the aggregate amount for which the reported products were sold during the reporting period, less any discounts, on-invoice adjustments, credit for returned merchandise, or other similar reductions in the amount charged to the retailer for the products covered by the report.

(B)(i) Nothing in this section prevents a seller from including in its report net sales of tangible personal property that are not otherwise required by this section.

(ii) Nothing in this section prevents a seller from reporting on a more detailed basis than required by this section.

(iii) For purposes of this section, sales of candy, food, and nonalcoholic beverages, including bottled soft drinks as defined by § 67-4-402(a)(1), may be reported in the aggregate for each retailer location, in lieu of reporting specific SKU (Stock Keeping Units) identification number totals for each product.

(C) This subdivision (a)(3) is deleted on July 1, 2022.

(b) The information report shall contain such information as deemed reasonably necessary by the commissioner of revenue to ascertain the correctness of any tax return or to determine the liability of any person taxable under this part, and may include, but is not limited to, the following information:

(1) The seller's name and license number;

(2) The retailer's name, beer permit number if applicable, and sales and use tax account number;

(3) The retailer's situs code and address, including street address, county, municipality, state, and zip code;

(4) The general type of product sold; provided, that all candy, food, and nonalcoholic beverages, including bottled soft drinks, may be treated as a single type of product;

(5) The dates each type of product was sold; provided, for all candy, food, and nonalcoholic beverage sales, including bottled soft drinks, the date can reflect the last day of the period covered by the report;

(6) The quantity of each type of product sold;

(7) The monthly or quarterly sales total, in dollars, of each type of product sold; and

(8) If applicable, the name of the tobacco product manufacturer providing the tobacco buydown payment, the purchase date to which the tobacco

buydown payment corresponds, and the amount of the tobacco buydown payment.

(c) The information report shall be filed electronically in a format specified by the commissioner; provided, however, that electronic submission shall not be required from any wholesaler that does not keep records electronically in the ordinary course of business.

(d) Notwithstanding subsection (b) or (c) to the contrary, no seller shall be required to change its record-keeping system for purposes of this section. If the seller's records do not include all of the information requested by the commissioner, or include the information in a different format than requested by the commissioner, the requirements of this section shall be satisfied if the seller includes in the report all of the requested information that the seller does have, in the format in which the seller ordinarily maintains such information.

(e) The information report shall be filed for each calendar quarter and shall be due no later than the twenty-fifth day of the month immediately following the end of such period; provided, however, that nothing in this section prevents the seller from filing on a monthly basis. Any seller who fails to provide the information report by the due date or who negligently or knowingly includes inaccurate information on the information report is subject to a penalty, not to exceed two hundred fifty dollars ($250), for each inaccurate report, or for every month the report, or part thereof, is not provided, up to a maximum amount of two thousand five hundred dollars ($2,500). The commissioner is authorized to waive the penalty, in whole or in part, for good and reasonable cause under § 67-1-803.

(f) Any person selling beer, as defined in § 57-5-101, who files the report required by this section, which report contains at least the information required by § 57-6-105(b), shall not be required to file with the department the report otherwise required by § 57-6-105(b); provided, however, that nothing in this subsection (f) shall relieve the seller from filing any report, or copy thereof, with any county or municipality.

(g) The commissioner shall not issue any assessment under § 67-1-1438, including a notice of proposed assessment, to any retailer based solely on the information report submitted pursuant to this section unless the department first issues to the retailer an inquiry letter setting forth the information that led the department to its conclusion and providing an opportunity for the retailer to explain the inconsistencies between its purchases and reported sales. Nothing in this section prohibits a jeopardy assessment under § 67-1-1431.

(h) **[Expires on July 1, 2022. See (h)(5).]** (1) Any wholesaler making sales of candy, food, and nonalcoholic beverages, including bottled soft drinks, in an amount less than five hundred thousand dollars ($500,000) during the prior calendar year shall not be required to include such sales of candy, food, and nonalcoholic beverage products, including bottled soft drinks, in the information report required under subsection (a).

(2) Any wholesaler making sales of candy, food, or nonalcoholic beverages, including bottled soft drinks, to an affiliate shall not be required to include sales of candy, food, or nonalcoholic beverages, including bottled soft drinks, to any affiliates in the information report required under subsection (a). For purposes of this section, "affiliate" has the same meaning as provided in

chapter 4, part 20 of this title.

(3) Any wholesaler making sales of candy, food, or nonalcoholic beverages, including bottled soft drinks, to a retailer under the following circumstances shall not be required to include such sales in the information report required by subsection (a):

(A) The retailer buys at least fifty percent (50%) of its candy, food, and nonalcoholic beverages, including bottled soft drinks, from an affiliate that falls within the exemption provided by subdivision (h)(2) and the retailer notifies the wholesaler in writing that this requirement is met; and

(B) The wholesaler shall retain the retailer's written notification and provide a copy to the department upon reasonable request.

(4) Any wholesaler making sales of candy, food, or nonalcoholic beverages, including bottled soft drinks, shall be allowed to submit the information required by this section in the format in which the seller ordinarily maintains such information.

(5) This subsection (h) is deleted on July 1, 2022.

(i) Nothing in this section limits the provisions of § 67-6-523.

(j) Any notice of proposed assessment sent to a taxpayer based on the information report submitted pursuant to this section shall clearly state in bold face type the following language:

As a taxpayer of Tennessee, you have a right to dispute any proposed assessment by filing a timely request for an informal conference.

(k) The department shall provide an assessment calculation for each type of product required to be reported under this section. The assessment calculation shall be posted on the website of the department.

(*l*) Any report provided to the department pursuant to this section shall be tax information of the wholesaler and shall be confidential pursuant to § 67-1-1702; provided, however, that the department is authorized to disclose, to an individual customer of the wholesaler, records of the customer's purchases contained within the report.

History.

Acts 2012, ch. 657, § 9; 2015, ch. 342, §§ 1-3; 2016, ch. 907, §§ 1-6; 2019, ch. 179, §§ 1-5.

Amendments.

The 2019 amendment added (a)(3)(B)(iii) and (*l*); substituted "July 1, 2022" for "July 1, 2019" in (a)(3)(C) and (h)(5); and, in (e), substituted "two hundred fifty dollars ($250)" for "one thousand dollars ($1,000)" and "two thousand five hundred dollars ($2,500)" for "ten thousand dollars ($10,000)".

Effective Dates.

Acts 2019, ch. 179, § 6. April 23, 2019.

Cross-References.

Confidentiality of public records, § 10-7-504.

PART 5

COLLECTION AND ENFORCEMENT GENERALLY

67-6-501. Tax collected from dealer — Property management company tax on vacation lodging — Mobile telecommunications service tax — Liability of marketplace facilitator.

(a) Except as otherwise provided in § 67-6-524(b), every dealer making sales, whether within or outside the state, of tangible personal property, for

distribution, storage, use, or other consumption in this state, or furnishing any of the things or services taxable under this chapter, is liable for the tax imposed by this chapter.

(b) The tax shall be collected from the dealer as defined in § 67-6-102 and paid at the time and in the manner as provided for in this part.

(c) The tax imposed in this part shall be at the rate provided by law of the retail sales price, as of the moment of sale, or of the purchase price, as of the moment of purchase, as the case may be, shall be collectible from all persons, as defined in § 67-6-102, engaged as dealers, as defined in § 67-6-102, in the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of tangible personal property, or in the furnishing of any of the things or services taxable under this chapter.

(d) When an individual property owner utilizes a property management company to manage a vacation lodging owned by the individual property owner, the tax levied by this chapter on the sales price of such rental shall be imposed on, and shall be remitted by, the property management company to the commissioner. This provision shall not be construed to prohibit the property management company from collecting the tax from the consumer as provided for in § 67-6-502. For the purposes of this subsection (d), the terms "individual property owner," "property management company," and "vacation lodging" shall have the same meanings as in § 67-4-702.

(e) A home service provider's liability for sales taxes due on mobile telecommunications services shall be determined in accordance with the Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116-126). The home service provider's responsibility for determining the place of primary use of the mobile telecommunications services shall be controlled by federal law.

(f) When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or any of the things or services taxable under this chapter, the marketplace facilitator is liable for the taxes imposed by this chapter on the sales price of the tangible personal property or the things or services taxable under this chapter regardless of whether the marketplace seller has a sales tax certificate of registration or would have been required to collect sales or use taxes had the sale not been facilitated by the marketplace facilitator unless:

(1) The marketplace facilitator made or facilitated total sales to consumers in this state of one hundred thousand dollars ($100,000) or less during the previous twelve-month period;

(2) The marketplace facilitator demonstrates, to the satisfaction of the commissioner, that substantially all of the marketplace sellers for whom the marketplace facilitator facilitates sales are registered dealers under this section, in which case the commissioner is authorized to waive the requirements of this subsection (f). If a waiver is granted pursuant to this subdivision (f)(2), the taxes levied under this chapter shall be collectible from the marketplace sellers; or

(3) The marketplace facilitator and the marketplace seller contractually agree that the marketplace seller will collect and remit all applicable taxes under this chapter and the marketplace seller:

(A) Has annual gross sales in the United States of over one billion dollars ($1,000,000,000), including the gross sales of any related entities,

and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor;

(B) Provides evidence to the marketplace facilitator that it is registered in this state under § 67-6-601; and

(C) Notifies the commissioner in a manner prescribed by the commissioner that the marketplace seller will collect and remit all applicable taxes under this chapter on its sales through the marketplace facilitator and is liable for failure to collect or remit applicable taxes on its sales.

(g) A marketplace seller shall not be obligated to collect and remit or be liable for the taxes levied or imposed by this chapter on any retail sale for which a marketplace facilitator has collected and remitted such tax.

(h) When a marketplace seller uses a marketplace facilitator to facilitate sales of tangible personal property or the things or services taxable under this chapter, the marketplace facilitator is not liable for the fee imposed under § 7-88-117, regardless of whether the marketplace seller is located within the district.

History.

Acts 1947, ch. 3, §§ 3, 4; C. Supp. 1950, §§ 1248.52-1248.54 (Williams, §§ 1328.24, 1328.25); Acts 1955, ch. 51, §§ 7-9, 11; 1955, ch. 242, § 6; 1957, ch. 307, § 1; 1959, ch. 15, § 2; 1963, ch. 38, §§ 3, 5; 1963, ch. 172, § 3; 1965, ch. 335, § 2; 1969, ch. 3, § 1; 1971, ch. 78, § 1; 1971, ch. 117, §§ 2, 3; 1972, ch. 653, § 1; 1973, ch. 239, § 1; 1974, ch. 675, § 1; 1975, ch. 316, § 1; 1976, ch. 466, §§ 1, 3; 1982, ch. 610, § 1; 1982, ch. 646, § 1; 1983, ch. 378, § 1; 1983, ch. 402, § 1; T.C.A. (orig. ed.), §§ 67-3003, 67-3016, 67-3018; Acts 2001, ch. 224, § 4; 2002, ch. 719, § 6; 2003, ch. 357, § 4; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 71, 104; 2020, ch. 646, § 8; 2020, ch. 759, §§ 6, 7.

Amendments.

The 2020 amendment by ch. 646 added (f), (g) and (h).

The 2020 amendment by ch. 759 added "Except as otherwise provided in § 67-6-524(b)," at the beginning of (a); and substituted "one hundred thousand dollars ($100,000)" for "five hundred thousand dollars ($500,000)" in (f)(1).

Effective Dates.

Acts 2020, ch. 646, § 11. October 1, 2020.

Acts 2020, ch. 759, § 18. October 1, 2020 at 12:01 a.m.

Attorney General Opinions.

An online marketplace facilitator, who engages in the regular, systematic solicitation of a consumer market in Tennessee, is a dealer if it consummates the sales transactions with those consumers. The Department of Revenue is empowered to promulgate rules requiring online marketplace facilitators to collect and remit sales tax on behalf of out-of-state dealers, provided the facilitators themselves are not out-of-state dealers. OAG 19-03, 2019 Tenn. AG LEXIS 3 (3/12/2019).

67-6-504. Returns and payment. [Effective until October 1, 2021. See version effective on October 1, 2021.]

(a) The taxes levied under this chapter shall be due and payable monthly, on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner, upon forms prescribed, prepared and furnished by the commissioner, returns, showing the gross sales, or purchases, as the case may be, arising from all sales or purchases taxable under this chapter during the preceding calendar month.

(b) At the time of transmitting the return required in this chapter to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due under the applicable provisions of this chapter, and failure to so remit such tax shall cause the tax to become delinquent.

(c) Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the commissioner may prescribe.

(d) Gross proceeds from the furnishing of things or services taxable under this chapter shall be reported and the tax shall be paid with respect thereto in the same manner as gross proceeds from the sale, rental or lease of tangible personal property and in accordance with such rules and regulations as the commissioner may prescribe.

(e) Any dealer who is liable for the tax imposed by this chapter may round off all figures used on the sales and use tax return to the nearest dollar amount.

(f) Notwithstanding any law to the contrary, when a taxpayer is required to remit payments electronically as set forth in § 67-1-703(b), then all returns required by this chapter that are associated with such payments shall be filed electronically using a method approved by the commissioner. When any taxpayer is required to file returns and remit payments electronically for any one (1) outlet, location or other place of business, the commissioner may require the taxpayer to file returns and remit payments electronically for each place of business of the taxpayer. The requirement to file electronically shall continue thereafter until such time as the commissioner advises the taxpayer to file by another method. In extenuating circumstances, the commissioner is authorized to waive the electronic payment and filing requirements under this subsection (f) and under § 67-1-703(b) and permit the taxpayer to file the return in paper form. The commissioner is authorized to require that any such paper filing be accompanied by a manual handling fee, not to exceed twenty-five dollars ($25.00), that is reasonably calculated by the department to account for the additional cost of preparing, printing, receiving, reviewing and processing any paper filing so permitted.

(g) In addition to any other penalty provided by law, the commissioner is authorized to assess any taxpayer required to file returns by electronic means under subsection (f) a penalty, not to exceed five hundred dollars ($500), for each instance of filing a return by any other means. Such penalty shall be subject to waiver under § 67-1-803.

(h) In computing the tax due or to be collected as the result of any transaction, the tax rate shall be the sum of the applicable state and local rate, if any, and the tax computation shall be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax shall be rounded to the next whole cent.

(i) A seller may elect to compute the tax due on a transaction on either an item or an invoice basis, and may apply the rounding rule provided for in subsection (h) to the aggregated state and local taxes. A seller shall not be required to collect the tax on a bracket system.

(j)(1) Any dealer making sales subject to the tax imposed by this chapter may choose to collect and remit taxes as a Model 1 or Model 2 seller, subject to this subsection (j). For purposes of this subsection (j), tax includes any associated interest and penalty.

(2)(A) A dealer choosing Model 1 shall contract with a certified service provider and shall permit the certified service provider to determine the

tax due, collect the tax, file returns, and remit the tax to the appropriate state on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. A Model 1 seller's liability to this state for the tax levied by this chapter is limited to the tax due on its own purchases, the tax due on any of its sales, leases, or rentals made outside the system provided by the certified service provider, and the tax due in the event of fraud by the Model 1 seller. The certified service provider shall not have any additional liability for state or local option taxes imposed by this chapter, if:

(i) The Model 1 seller charged and collected an incorrect amount of sales or use tax in reliance on erroneous data made available for review but not discovered during the certification of the certified service provider's automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct the automated system. The commissioner may allot additional time upon a showing by the certified service provider of the need for additional time to correct the automated system; or

(ii) An item or transaction is incorrectly classified as to its taxability within the certified service provider's automated system that was certified by this state; provided, that the taxability error is corrected within ten (10) days of the date of the notification by the commissioner to correct the automated system.

(B) Beginning on the first day after the allotted period of time to correct the certified service provider's automated system, the certified service provider shall be liable for the tax, penalty and interest resulting from the failure to correct the certified service provider's automated system. This subdivision (j)(2) does not apply to errors in charging and collecting or remitting sales or use tax that are the result of classifying the item or transaction within a defined term or other classification within the certified service provider's automated system.

(3) A dealer choosing Model 2 shall use a certified automated system to determine the tax due on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. Model 2 sellers shall not have any additional liability for state or local option taxes imposed by this chapter, if the Model 2 seller charged and collected or remitted an incorrect amount of sales or use tax in reliance on the certification of the certified automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct or notification by the provider of the certified automated system of the availability of updates to correct the certified automated system. Beginning on the eleventh day, the Model 2 seller shall be liable for the tax, penalty, and interest resulting from the failure to correct or update the certified automated system for errors resulting from reliance on the certification.

(k) A certified service provider has, and is subject to, all of the rights, liabilities, duties and responsibilities imposed by this chapter as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases.

(*l*) The commissioner may enter into contracts with certified service providers for the collection and reporting of the tax imposed under this chapter. The commissioner may enter into the contracts in conjunction with other states.

(m) When reporting the local sales and use tax levied under part 7 of this chapter, out of state dealers shall provide sufficient information as prescribed by the commissioner to indicate the incorporated municipality or unincorporated area of a county into which the sale is shipped or delivered, even if the local tax rates of the municipality and unincorporated area of the county are the same.

History.

Acts 1947, ch. 3, §§ 8, 10; C. Supp. 1950, §§ 1248.64, 1248.75 (Williams, §§ 1328.30, 1328.32); modified; Acts 1955, ch. 51, § 12; T.C.A. (orig. ed.), §§ 67-3022 — 67-3024; Acts 1985, ch. 251, § 1; 2003, ch. 241, § 1; 2003, ch. 357, § 58; 2004, ch. 959, § 68; 2005, ch. 131, § 2; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 105, 106, 158, 159, 187; 2008, ch. 1106, § 32; 2009, ch. 530, §§ 35, 46; 2011, ch. 72, §§ 1, 12; 2012, ch. 657, §§ 7, 8; 2019, ch. 491, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 157; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment, effective October 1, 2019, added (m).

Effective Dates.

Acts 2019, ch. 491, § 8. October 1, 2019.

67-6-504. Returns and payment. [Effective on October 1, 2021. See version effective until October 1, 2021.]

(a) The taxes levied under this chapter shall be due and payable monthly, on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers on or before the twentieth day of each month to transmit to the commissioner, upon forms prescribed, prepared and furnished by the commissioner, returns, showing the gross sales, or purchases, as the case may be, arising from all sales or purchases taxable under this chapter during the preceding calendar month.

(b) At the time of transmitting the return required in this chapter to the commissioner, the dealer shall remit to the commissioner therewith the amount of tax due under the applicable provisions of this chapter, and failure to so remit such tax shall cause the tax to become delinquent.

(c) Gross proceeds from rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the commissioner may prescribe.

(d) Gross proceeds from the furnishing of things or services taxable under this chapter shall be reported and the tax shall be paid with respect thereto in the same manner as gross proceeds from the sale, rental or lease of tangible personal property and in accordance with such rules and regulations as the commissioner may prescribe.

(e) Any dealer who is liable for the tax imposed by this chapter may round off all figures used on the sales and use tax return to the nearest dollar amount.

(f) Notwithstanding any law to the contrary, when a taxpayer is required to remit payments electronically as set forth in § 67-1-703(b), then all returns required by this chapter that are associated with such payments shall be filed

electronically using a method approved by the commissioner. When any taxpayer is required to file returns and remit payments electronically for any one (1) outlet, location or other place of business, the commissioner may require the taxpayer to file returns and remit payments electronically for each place of business of the taxpayer. The requirement to file electronically shall continue thereafter until such time as the commissioner advises the taxpayer to file by another method. In extenuating circumstances, the commissioner is authorized to waive the electronic payment and filing requirements under this subsection (f) and under § 67-1-703(b) and permit the taxpayer to file the return in paper form. The commissioner is authorized to require that any such paper filing be accompanied by a manual handling fee, not to exceed twenty-five dollars ($25.00), that is reasonably calculated by the department to account for the additional cost of preparing, printing, receiving, reviewing and processing any paper filing so permitted.

(g) In addition to any other penalty provided by law, the commissioner is authorized to assess any taxpayer required to file returns by electronic means under subsection (f) a penalty, not to exceed five hundred dollars ($500), for each instance of filing a return by any other means. Such penalty shall be subject to waiver under § 67-1-803.

(h) In computing the tax due or to be collected as the result of any transaction, the tax rate shall be the sum of the applicable state and local rate, if any, and the tax computation shall be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax shall be rounded to the next whole cent.

(i) A seller may elect to compute the tax due on a transaction on either an item or an invoice basis, and may apply the rounding rule provided for in subsection (h) to the aggregated state and local taxes. A seller shall not be required to collect the tax on a bracket system.

(j)(1) Any dealer making sales subject to the tax imposed by this chapter may choose to collect and remit taxes as a Model 1 or Model 2 seller, subject to this subsection (j). For purposes of this subsection (j), tax includes any associated interest and penalty.

(2)(A) A dealer choosing Model 1 shall contract with a certified service provider and shall permit the certified service provider to determine the tax due, collect the tax, file returns, and remit the tax to the appropriate state on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. A Model 1 seller's liability to this state for the tax levied by this chapter is limited to the tax due on its own purchases, the tax due on any of its sales, leases, or rentals made outside the system provided by the certified service provider, and the tax due in the event of fraud by the Model 1 seller. The certified service provider shall not have any additional liability for state or local option taxes imposed by this chapter, if:

(i) The Model 1 seller charged and collected an incorrect amount of sales or use tax in reliance on erroneous data made available for review but not discovered during the certification of the certified service provider's automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct the

automated system. The commissioner may allot additional time upon a showing by the certified service provider of the need for additional time to correct the automated system; or

(ii) An item or transaction is incorrectly classified as to its taxability within the certified service provider's automated system that was certified by this state; provided, that the taxability error is corrected within ten (10) days of the date of the notification by the commissioner to correct the automated system.

(B) Beginning on the first day after the allotted period of time to correct the certified service provider's automated system, the certified service provider shall be liable for the tax, penalty and interest resulting from the failure to correct the certified service provider's automated system. This subdivision (j)(2) does not apply to errors in charging and collecting or remitting sales or use tax that are the result of classifying the item or transaction within a defined term or other classification within the certified service provider's automated system.

(3) A dealer choosing Model 2 shall use a certified automated system to determine the tax due on all of its sales, leases, or rentals of tangible personal property or services that are subject to the tax levied by this chapter. Model 2 sellers shall not have any additional liability for state or local option taxes imposed by this chapter, if the Model 2 seller charged and collected or remitted an incorrect amount of sales or use tax in reliance on the certification of the certified automated system; provided, that the error is corrected within ten (10) days of the date of notification by the commissioner to correct or notification by the provider of the certified automated system of the availability of updates to correct the certified automated system. Beginning on the eleventh day, the Model 2 seller shall be liable for the tax, penalty, and interest resulting from the failure to correct or update the certified automated system for errors resulting from reliance on the certification.

(k) A certified service provider has, and is subject to, all of the rights, liabilities, duties and responsibilities imposed by this chapter as if it were the Model 1 seller for whom the certified service provider has agreed to perform all sales and use tax functions, except the Model 1 seller's obligation to remit tax on its own purchases.

(l) The commissioner may enter into contracts with certified service providers for the collection and reporting of the tax imposed under this chapter. The commissioner may enter into the contracts in conjunction with other states.

(m) When reporting the local sales and use tax levied under part 7 of this chapter, out of state dealers shall provide sufficient information as prescribed by the commissioner to indicate the incorporated municipality or unincorporated area of a county into which the sale is shipped or delivered, even if the local tax rates of the municipality and unincorporated area of the county are the same.

(n) Notwithstanding any law to the contrary, a dealer who owns and operates multiple micro markets in the state may file a single return for all sales or purchases made at micro markets within this state and report on a consolidated basis all sales and purchases made at micro markets within each local jurisdiction owned and operated by the dealer and taxable under this chapter.

History.

Acts 1947, ch. 3, §§ 8, 10; C. Supp. 1950, §§ 1248.64, 1248.75 (Williams, §§ 1328.30, 1328.32); modified; Acts 1955, ch. 51, § 12; T.C.A. (orig. ed.), §§ 67-3022 — 67-3024; Acts 1985, ch. 251, § 1; 2003, ch. 241, § 1; 2003, ch. 357, § 58; 2004, ch. 959, § 68; 2005, ch. 131, § 2; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 105, 106, 158, 159, 187; 2008, ch. 1106, § 32; 2009, ch. 530, §§ 35, 46; 2011, ch. 72, §§ 1, 12; 2012, ch. 657, §§ 7, 8; 2019, ch. 491, § 1; 2021, ch. 289, § 4.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 157; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment, effective October 1, 2019, added (m).

The 2021 amendment added (n).

Effective Dates.

Acts 2019, ch. 491, § 8. October 1, 2019.

Acts 2021, ch. 289, § 6. October 1, 2021.

67-6-505. Alternative filing and payments.

(a) The commissioner is specifically authorized to establish by rule periodic filing and payment dates, other than monthly, in those instances where the commissioner deems it to be in the best interests of the state to do so.

(b) In cases where the commissioner determines, based on the best information available, that a taxpayer either has or may have an average monthly liability of five hundred dollars ($500) or more, the commissioner shall require advance estimated payments of tax in such amounts as the commissioner deems necessary to protect the state's interest, as a condition precedent to the payment and filing of tax returns on any basis other than monthly.

(c)(1) Notwithstanding § 67-6-504(a), dealers whose sales and use tax liability for twelve (12) consecutive months has averaged one thousand dollars ($1,000) or less per month, adjusted every five (5) years to reflect inflation, as measured by the United States bureau of labor statistics consumer price index for all urban consumers, are authorized to file monthly or quarterly.

(2) Any sales and use tax liability amount that is adjusted for inflation in accordance with subdivision (c)(1) must be rounded to the nearest ten dollars ($10.00), and the first adjustment for inflation must commence on January 1, 2026.

History.

Acts 1947, ch. 3, § 8; 1949, ch. 245, § 3; C. Supp. 1950, § 1248.66 (Williams, § 1328.30); Acts 1965, ch. 4, § 1; 1969, ch. 164, §§ 1, 2; 1970, ch. 360, § 1; 1977, ch. 64, § 1; 1980, ch. 885, § 13; 1983, ch. 238, §§ 1, 2; T.C.A. (orig. ed.), § 67-3026; Acts 1986, ch. 571, § 1; 2021, ch. 275, § 1.

Amendments.

The 2021 amendment added (c).

Effective Dates.

Acts 2021, ch. 275, § 2. July 1, 2021.

67-6-509. Deduction for dealer's accounting costs.

(a) An out-of-state person making sales in Tennessee, who is not required to register for sales and use tax under applicable law, but who nevertheless voluntarily registers to collect and remit use tax on items of tangible personal property sold to Tennessee customers, shall be allowed, for the purpose of compensating such person in accounting for and remitting the tax, a deduction against taxes due, reported and paid to the department as follows:

(1) Two percent (2%) of the first two thousand five hundred dollars ($2,500) on each report; and

(2) One and fifteen one-hundredths percent (1.15%) of amounts over two thousand five hundred dollars ($2,500) on each report.

(b) No deduction from tax shall be allowed if any such report or payment of tax is delinquent.

(c) Notwithstanding subsection (a), a Model 1 seller under the Streamlined Sales and Use Tax Agreement shall not be entitled to the vendor's compensation described in subsection (a).

(d)(1) In addition to any compensation that may be provided under subsection (a), the commissioner is authorized to provide the monetary allowances required to be provided by the state to certified service providers and volunteer sellers pursuant to Article VI of the Streamlined Sales and Use Tax Agreement as it may be amended from time to time.

(2) The monetary allowances shall be in the form of vendor's compensation allowances that certified service providers or volunteer sellers are permitted to retain from taxes due pursuant to this chapter that are to be collected and remitted to this state on sales of the volunteer seller in this state.

(3) The details of the monetary allowances shall, in the case of a Model 1 seller, be outlined in each contract between the Streamlined Sales and Use Tax Agreement governing board and the certified service provider. Vendor's compensation rates on taxes due that may be retained by a volunteer seller that is a Model 2 seller and all other volunteer sellers that are not Model 2 sellers shall be determined by the commissioner in accordance with Article VI of the Streamlined Sales and Use Tax Agreement and the commissioner shall cause the rates and their effective dates to be filed with the secretary of state for publication in the Tennessee Administrative Register.

(4) Vendor's compensation rates published in the Tennessee Administrative Register shall remain in effect until new rates determined by the commissioner and published in the Tennessee Administrative Register become effective.

(e) For purposes of subsection (d), "volunteer seller" means a seller that registered in this state through the Streamlined Central Registration System for sales and use tax purposes, does not have a fixed business location in this state, and otherwise meets the definition of volunteer seller as defined by the Streamlined Sales and Use Tax governing board and "taxes due" means sales or use tax revenue generated for the state by a volunteer seller pursuant to this chapter.

History.

Acts 1947, ch. 3, § 8; C. Supp. 1950, § 1248.65 (Williams, § 1328.30); Acts 1980, ch. 594, § 1; 1980, ch. 871, § 3; T.C.A. (orig. ed.), § 67-3021; Acts 1984 (Ex. Sess.), ch. 3, § 1; 1984, ch. 832, § 14; 1992, ch. 529, § 13; 1993, ch. 501, § 1; 1999, ch. 412, § 1; 2000, ch. 983, § 7; 2004, ch. 959, § 20; 2005, ch. 311, § 2; 2007, ch. 602, §§ 52, 108; 2020, ch. 759, § 8.

Amendments.

The 2020 amendment substituted "who is not required" for "who cannot be required" in (a).

Effective Dates.

Acts 2020, ch. 759, § 18. October 1, 2020 at 12:01 a.m.

67-6-515. Collection of taxes by marketplace facilitator — Reports — Audit — Relief from liability.

(a) A marketplace facilitator that collects and remits the taxes imposed by this chapter shall collect taxes on sales through its marketplace based upon the address to which the tangible personal property or things taxable under this chapter are shipped; provided, however, that taxes collected by the marketplace facilitator on services sold through its marketplace shall be collected as otherwise provided in this chapter.

(b) A marketplace facilitator shall report the sales and use taxes on sales through its marketplace separately from any sales and use taxes collected on sales made directly by the marketplace facilitator or affiliates of the marketplace facilitator.

(c) The commissioner may, in the commissioner's sole discretion, audit a marketplace facilitator for sales made by marketplace sellers and facilitated by the marketplace facilitator, except with respect to transactions that are subject to § 67-6-501(f)(1)-(3). The commissioner shall not audit or otherwise assess taxes against marketplace sellers for sales facilitated by a marketplace facilitator except to the extent the marketplace facilitator seeks relief as provided below or with respect to transactions that are subject to § 67-6-501(f)(1)-(3).

(d) A marketplace facilitator shall be relieved of liability for failure to collect and remit the correct amount of taxes to the extent that the error was due to incorrect or insufficient information given to the marketplace facilitator by the marketplace seller if the marketplace facilitator demonstrates that it made a reasonable effort to obtain correct and sufficient information from the marketplace seller. This subsection (d) shall not apply if the marketplace facilitator and the marketplace seller are affiliates.

(e) No class action lawsuit may be brought against a marketplace facilitator in this state on behalf of purchasers relating to overcollection of sales or use taxes by the marketplace facilitator, regardless of whether that claim is characterized as a tax refund claim.

(f) Nothing in this section affects the obligation of any purchaser to remit sales or use taxes for any taxable transaction for which a marketplace facilitator or seller does not collect and remit sales and use taxes.

History.
Acts 2020, ch. 646, § 9.

Compiler's Notes.
Former § 67-6-515 (Acts 2012, ch. 624, § 1), concerning when the tax becomes delinquent, was repealed by Acts 1984, ch. 832, § 36 repealed by its own terms, effective January 1, 2014.

Effective Dates.
Acts 2020, ch. 646, § 11. October 1, 2020.

67-6-524. Registration of dealers.

(a) Dealers with a physical presence in this state shall register with the department to collect and remit tax in accordance with this chapter.

(b) Dealers with no physical presence in this state shall register with the department to collect and remit tax in accordance with this chapter if the dealer engages in the regular or systematic solicitation of consumers in this state through any means and made sales that exceeded one hundred thousand

dollars ($100,000) to consumers in this state during the previous twelve-month period. Such dealers shall begin to collect and remit the tax by the first day of the third calendar month following the month in which this threshold was met; provided, however, that this subsection (b) does not require a dealer to collect the tax for sales made before October 1, 2020.

History.
Acts 2020, ch. 759, § 5.

Code Commission Notes. Acts 2020, ch. 759, § 5 enacted this section as § 67-6-543 but the section has been redesignated as § 67-6-524 by authority of the Code Commission.

Effective Dates.
Acts 2020, ch. 759, § 18. October 1, 2020 at 12:01 a.m.

67-6-525. Findings related to sales threshold standard.

The general assembly finds that the sales threshold standard required by § 67-6-524(b) matches the benchmark established by South Dakota that was analyzed and found to support it being upheld as constitutional by the supreme court of the United States in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018).

History.
Acts 2020, ch. 759, § 5.

Code Commission Notes. Acts 2020, ch. 759, § 5 enacted this section as § 67-6-544 but the section has been redesignated as § 67-6-525 by authority of the Code Commission.

Effective Dates.
Acts 2020, ch. 759, § 18. October 1, 2020 at 12:01 a.m.

67-6-526. Effect on substantial nexus criteria.

Section 67-6-524 does not change the substantial nexus criteria for determining when a person is required to pay the business tax under § 67-4-717, excise tax under § 67-4-2007, or franchise tax under § 67-4-2105.

History.
Acts 2020, ch. 759, § 5.

Code Commission Notes. Acts 2020, ch. 759, § 5 enacted this section as § 67-6-545 but the section has been redesignated as § 67-6-526 by authority of the Code Commission.

Effective Dates.
Acts 2020, ch. 759, § 18. October 1, 2020 at 12:01 a.m.

67-6-527. [Reserved.]

67-6-528. Common carriers seeking reduced rate — Applications — Certificates.

(a) Common carriers seeking to make purchases subject to the reduced rate provided in part 2 of this chapter shall apply to the commissioner for a certificate. This application shall be made upon forms provided by the commissioner and shall require information deemed necessary by the commissioner to establish that the applicant is a common carrier making purchases of tangible personal property for use outside this state. The certificate may be revoked by the commissioner at any time, if the commissioner finds that the holder no longer meets the conditions precedent for the reduced rate.

(b) Common carriers making purchases subject to the reduced rate provided in part 2 of this chapter shall keep records of all such purchases, establishing to the satisfaction of the commissioner that items purchased were not used in Tennessee, but were removed from this state for use and consumption outside this state.

History.

Acts 1987, ch. 428, § 4; 2003, ch. 357, § 60; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 160; 2009, ch. 530, § 35; 2011, ch. 72, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 160; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-536. Returns submitted by Model 1 and 2 sellers — Informational return — Electronic payments — Due dates.

(a) Model 1 or 2 sellers with business locations in this state shall submit their returns in a format required by the commissioner. Model 1 or 2 sellers that do not have business locations in this state may submit their returns in a format adopted by the member states to the Streamlined Sales and Use Tax Agreement; provided, however, that all of the returns shall be filed electronically.

(b) Notwithstanding any law to the contrary, the commissioner is authorized to require Model 1 or 2 sellers that submit returns in a format adopted by the member states to the Streamlined Sales and Use Tax Agreement to submit once a year an informational return as permitted by the member states to the Streamlined Sales and Use Tax Agreement.

(c) Notwithstanding the provisions of § 67-1-703 to the contrary, all remittances from Model 1 or 2 sellers shall be made electronically, using ACH Credit or ACH Debit processes. The commissioner is authorized to provide for an alternative method of making the payment in the event the electronic funds transfer process fails.

(d) Notwithstanding any law to the contrary, a seller that is registered using the central registration system provided by states that are members of the Streamlined Sales and Use Tax Agreement, does not have a legal requirement to register in this state, is not a Model 1 or 2 seller, and has not accumulated more than one thousand dollars ($1,000) in state and local sales and use taxes shall be permitted to file a sales and use tax return at any time within one (1) year of the month of initial registration and shall be permitted to file future returns on an annual basis in succeeding years. The returns shall be due the twentieth day of the month following the tax period covered by the return. A seller that has accumulated state and local sales and use tax funds in the amount of one thousand dollars ($1,000) shall file a return by the twentieth day of the month following the month in which the accumulated taxes reach or exceed one thousand dollars ($1,000). Nothing in this subsection (d) shall relieve a seller who collects state sales or use tax from its customers from liability for failure to pay over those funds to the commissioner on behalf of the state.

History.

Acts 2003, ch. 357, § 61; 2004, ch. 959, §§ 21, 68; 2005, ch. 311, §§ 1, 2; 2007, ch. 602, §§ 51, 113, 161; 2009, ch. 530, § 35; 2011, ch. 72, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 161; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-539. Bundled transactions — Telecommunications services.

(a)(1) For purposes of this section, a bundled transaction means the retail sale of two (2) or more services, where:

(A) The services are otherwise distinct and identifiable; and

(B) The services are sold for one (1) nonitemized price.

(2) A bundled transaction does not include the sale of any services in which the sales price varies, or is negotiable, based on the selection by the purchaser of the services included in the transaction.

(b) Notwithstanding any other law to the contrary, in the case of a bundled transaction of telecommunication services, ancillary services, internet access services, or audio or video programming services, or direct-to-home satellite television programming services:

(1) If the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services shall be subject to tax, unless the provider can identify, by reasonable and verifiable standards, such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes;

(2) If the price is attributable to services that are subject to tax at different tax rates, the total price shall be treated as attributable to the services subject to tax at the highest tax rate, unless the provider can identify, by reasonable and verifiable standards, the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes;

(3) If the taxes that would have otherwise been collected on the distinct and identifiable services would have been designated to different funds or purposes, such designation shall be based on the same allocation utilized in subdivision (b)(1) or (b)(2). However, if the total of the bundled transaction was subjected to tax or subjected to tax at the higher combined state and local rate, a reasonable allocation method approved by the commissioner shall be made for designation of the taxes to the different funds or purposes.

(4) This section shall apply unless otherwise provided by federal law.

History.

Acts 2004, ch. 782, § 12; 2005, ch. 499, § 56; 2007, ch. 602, §§ 46, 162; 2009, ch. 530, § 35; 2011, ch. 72, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 162; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

PART 6

DEALER REGISTRATION

67-6-601. Certificate of registration — Required — Application. [Effective until October 1, 2021. See version effective on October 1, 2021.]

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a "certificate of registration" for each place of business.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part.

(c) The commissioner may impose additional or different registration and/or reporting requirements as determined to be necessary by the commissioner in order to administer the allocation provisions of §§ 67-6-103 and 67-6-712, regarding sports authorities and public building authorities and industrial development corporations created pursuant to title 7, chapter 53.

(d) Only for sole purposes of this chapter, including registering with the department, a marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace.

History.

Acts 1947, ch. 3, § 16, C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041; Acts 1993, ch. 519, § 4; 1998, ch. 1055, § 12; 2003, ch. 357, § 62; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 163; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2011, ch. 420, § 15; 2020, ch. 646, § 10.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 163; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2020 amendment added (d).

Effective Dates.

Acts 2020, ch. 646, § 11. October 1, 2020.

67-6-601. Certificate of registration — Required — Application. [Effective on October 1, 2021. See version effective until October 1, 2021.]

(a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the commissioner an application for a certificate of registration for each place of business; however, a person operating multiple micro markets in this state may file with the commissioner a single certificate of registration for each local jurisdiction in which it operates micro markets.

(b) Any person who engages in the business of furnishing any of the things or services taxable under this chapter shall likewise apply for and obtain a certificate of registration as provided by this part.

(c) The commissioner may impose additional or different registration and/or reporting requirements as determined to be necessary by the commissioner in order to administer the allocation provisions of §§ 67-6-103 and 67-6-712,

regarding sports authorities and public building authorities and industrial development corporations created pursuant to title 7, chapter 53.

(d) Only for sole purposes of this chapter, including registering with the department, a marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace.

History.

Acts 1947, ch. 3, § 16, C. Supp. 1950, § 1248.88 (Williams, § 1328.38); Acts 1951, ch. 168, § 1; 1955, ch. 51, § 14; 1955, ch. 242, § 9; 1961, ch. 136, § 1; 1963, ch. 92, § 1; 1969, ch. 109, § 1; 1971, ch. 55, § 1; 1971, ch. 92, § 1; 1971, ch. 186, § 1; T.C.A. (orig. ed.), § 67-3041; Acts 1993, ch. 519, § 4; 1998, ch. 1055, § 12; 2003, ch. 357, § 62; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 51, 163; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2011, ch. 420, § 15; 2020, ch. 646, § 10; 2021, ch. 289, § 5.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 163; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2020 amendment added (d).

The 2021 amendment, in (a), added "; however, a person operating multiple micro markets in this state may file with the commissioner a single certificate of registration for each local jurisdiction in which it operates micro market".

Effective Dates.

Acts 2020, ch. 646, § 11. October 1, 2020.

Acts 2021, ch. 289, § 6. October 1, 2021.

PART 7

1963 LOCAL OPTION REVENUE ACT

67-6-702. Tax authorized — Rates — Termination of services tax.

(a)(1) Any county, by resolution of its county legislative body, or any incorporated city or town, by ordinance of its governing body, is authorized to levy a tax on the same privileges subject to this chapter as the chapter may be amended, that are exercised within such county, city or town, to be levied and collected in the same manner and on all such privileges, but not to exceed two and three fourths percent (2.75%); provided, that the tax levied shall apply only to the first one thousand six hundred dollars ($1,600) on the sale or use of any single article of personal property.

(2) Any five-dollar or seven-dollar and fifty-cent tax limit on the sale or use of any single article of personal property in effect at present may be removed, and, by resolution in the case of counties and by ordinance in the case of municipalities, the tax at the existing rate may, instead, be made to apply to the bases provided in subdivision (a)(1). The resolution or ordinance shall be passed at least twice at two (2) or more consecutive public meetings, not more than one (1) of which may be held on any single day. Notice of the meetings and of the fact that this matter is on the agenda of the meetings shall be published at least once in a newspaper of general circulation throughout the jurisdiction involved not less than seven (7) days before the first of the meetings. If the county or counties in which it is located does not increase the base of the county-wide local sales and use tax pursuant to this subdivision (a)(2), any municipality may by ordinance apply any county tax rate in effect in the municipality to the bases authorized in subdivision (a)(1) for purposes of the sale or use of any single article of personal property

within the municipality's corporate limits. The ordinance increasing the base of the county-wide tax within the municipality shall be adopted as required in this subdivision (a)(2).

(3) Once any local sales tax limit has been removed and the tax rate applied to the base provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body. For any municipality or county which implements a local sales tax for the first time after May 17, 1983, or during the phase-in period provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body.

(4) For the purpose of this part, persons engaged in the business of selling water shall be considered to be exercising a taxable privilege at the place where the tangible personal property is delivered to the purchaser.

(b) Notwithstanding other provisions of this chapter, with respect to water sold to or used by manufacturers at the state tax rate of one percent (1%) as authorized in § 67-6-206, the local tax thereon shall be imposed at the rate of one third of one percent (⅓%) whenever the rate of the local tax does not exceed one percent (1%) and at the rate of one-half of one percent (0.5%) whenever the rate of the local tax exceeds one percent (1%). The maximum local tax on the sale or use of any single article of industrial or farm machinery shall be as provided in subsection (a).

(c) A use tax paid by the lessee of tangible personal property from a lessor which is a tax exempt entity pursuant to an election made under § 67-6-204(b) shall be in lieu of any tax that might otherwise be imposed under this part, and no additional sales or use tax may be imposed under this part on rental payments with respect to which a use tax based on the purchase price of the tangible personal property has been paid by election.

(d) "Single article" means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article. Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or that are included as part of the sales price of the vehicle shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a motor vehicle dealer that are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit. Parts and accessories and any other additional or incidental items or services that are part of the sale of a manufactured home shall be

treated as part of the manufactured home unit in the same manner as parts and accessories for motor vehicles are treated as part of the motor vehicle unit.

(e) Notwithstanding any other provision of this chapter, with respect to sales of tangible personal property to common carriers for use outside this state subject to the reduced rate provided in part 2 of this chapter, the local tax thereon shall be at the rate of one and one-half percent (1.5%). The maximum local tax on the sale or use of any single article of personal property shall be as provided in subsection (a).

(f) [Deleted by 2019 amendment.]

(g)(1) Notwithstanding any other provisions of this chapter, local tax with respect to interstate or international telecommunications services, that are subject to state tax shall be imposed at the rate of one and one-half percent (1.5%); provided, that interstate and international telecommunications services to businesses are exempt from local tax.

(2) Notwithstanding any other provisions of this chapter, local tax with respect to intrastate telecommunications services and ancillary services that are subject to state tax, shall be imposed at the rate of two and one-half percent (2.5%).

(3) Local tax with respect to "prepaid calling services" and "prepaid wireless calling services" that are subject to tax shall be imposed at the rate of tax levied on the sale of tangible personal property at retail by subsection (a) and at the time of the retail sale of prepaid calling service and prepaid wireless calling service.

(4) Notwithstanding any other provisions of this chapter, local tax with respect to specified digital products that are subject to state tax shall be imposed at the rate of two and one-half percent (2.5%).

(h) Notwithstanding any other law to the contrary, sales of tangible personal property upon which a state sales and use tax is levied shall be subject to a local sales and use tax at the rate of two and one quarter percent (2.25%) when obtained from any vending machine or device.

History.

Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050; Acts 1984 (Ex. Sess.), ch. 8, §§ 5, 9; 1984, ch. 631, § 1; 1984, ch. 721, § 1; 1984, ch. 729, § 1; 1985, ch. 356, §§ 6, 8; 1986, ch. 560, § 2; 1987, ch. 428, § 6; 1988, ch. 684, § 1; 1988, ch. 789, § 2; 1989, ch. 312, § 11; 1990, ch. 661, §§ 1, 2; 1992, ch. 529, § 15; 1992, ch. 913, § 6; 1993, ch. 492, §§ 1-3; 1995, ch. 184, § 1; 1996, ch. 743, § 1; 1997, ch. 194, § 3; 1999, ch. 413, § 5; 2002, ch. 719, §§ 5, 9; 2003, ch. 357, §§ 4, 64, 65; 2004, ch. 782, § 13; 2004, ch. 959, §§ 24, 25, 68; 2005, ch. 311, §§ 1-3; 2007, ch. 602, §§ 51, 71, 118, 119, 164; 2008, ch. 1106, § 21; 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2011, ch. 467, § 5; 2019, ch. 491, § 2.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 164; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment, effective October 1, 2019, deleted (f) which read: "Notwithstanding any other provisions of this part, dealers with no location in this state may choose to pay, in lieu of the tax otherwise authorized by this part, local tax at the rate of two and twenty-five hundredths percent (2.25%) of the sales price on all sales made in this state."

Effective Dates.
Acts 2019, ch. 491, § 8. October 1, 2019.

67-6-704. Exemptions.

No county or incorporated city or town is authorized to levy any tax on the sale, purchase, use, consumption or distribution of electric power or energy, or of natural or artificial gas, or coal and fuel oil or steam and chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government.

History.
Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; Acts 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050; Acts 1985, ch. 452, § 7; 1989, ch. 430, § 7; 2003, ch. 357, § 66; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 165, 187; 2009, ch. 530, §§ 35, 47; 2011, ch. 72, §§ 1, 13; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; 2019, ch. 157, § 1.

Compiler's Notes.
This section was to be repealed effective July 1, 2021, by Acts 2007, ch. 602, § 165; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Effective Dates.
Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

67-6-706. Referendum.

(a)(1) Any ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county or the city or town, as the case may be.

(2) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(3) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, however, that no tax shall be collected under any such ordinance or resolution until the first day of a month occurring at least thirty (30) days after the operative date.

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall also be open to the voters of the city or town.

(2)(A) Except as provided in subdivision (b)(2)(B), should any county or city or town hold an election under this section, and the ordinance or resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election.

(B) In counties having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000), according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election.

History.

Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968, ch. 488, § 3; 1971, ch. 83, § 1; 1972, ch. 455, § 1; 1982, ch. 591, § 1; T.C.A., § 67-3053; Acts 1985, ch. 234, § 1; 1998, ch. 618, § 3; 2003, ch. 357, § 67; 2004, ch. 959, §§ 26, 68; 2005, ch. 311, §§ 1, 2; 2007, ch. 602, §§ 51, 166; 2009, ch. 530, § 35; 2011, ch. 72, § 1.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 166; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

67-6-710. Collection and administration.

(a)(1) In collecting and administering the tax levied under the authority of this part, the commissioner of revenue shall have the same powers as the commissioner has in collecting and administering the state sales tax.

(2) Rules and regulations promulgated by the commissioner under §§ 67-1-102 and 67-6-402 shall be applicable to the tax levied under the authority of this part, and shall be binding on cities, counties, and towns, and interest and penalty for delinquencies shall be imposed equal to the rates provided in § 67-6-516.

(b)(1) The department of revenue shall collect such tax concurrently with the collection of the state tax in the same manner as the state tax is collected; provided, that the department has determined that such collection of the tax is feasible, and has promulgated rules and regulations governing such collection.

(2) The department shall remit the proceeds of the tax to the county, city or town levying the tax, less a reasonable amount of percentage as determined by the department to cover the expenses of administration and collection. This percentage shall be one and one hundred twenty-five thousandths percent (1.125%). The percentage shall not be less than necessary to defray the state's expenses in administering, collecting, and remitting the local sales tax, as determined annually by the department and certified by the comptroller of the treasury.

(c) The county, city or town shall furnish a certified copy of the adopting resolution or ordinance to the department of revenue in accordance with regulations prescribed by the department.

(d)(1) Upon any claim of illegal assessment or collection, the taxpayer shall have the remedy provided in chapter 1, part 18 of this title, it being the intention of the general assembly that law which applies to the recovery of state taxes illegally assessed or collected be conformed to apply to the recovery of taxes illegally assessed or collected under the authority of this part.

(2) The resolution or ordinance levying the tax shall designate the county or municipal officer against whom suit may be brought for recovery.

(e) [Deleted by 2019 amendment.]

(f) Proceeds of the taxes provided for in § 67-6-702(g) shall be distributed as follows:

(1) Fifty percent (50%) shall be distributed as provided in subsection (e); and

(2) Fifty percent (50%) shall be distributed to incorporated municipalities in the proportion that the population of each bears to the aggregate population of the state and to counties in the proportion the population of unincorporated areas of the county bears to the aggregate population of the state, according to the most recent federal census and other censuses authorized by law. Counties and incorporated municipalities shall use such funds in the same manner and for the same purposes as funds distributed pursuant to § 67-6-712.

(g)(1) Proceeds of the tax on sales of tangible personal property obtained from any vending machine or device as provided for in § 67-6-702 shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

(2) The amount received by the county under subdivision (g)(1) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

(h)(1) Notwithstanding any provision of law to the contrary, the commissioner, based upon reporting of exempt sales under § 67-6-393 and any other data or information the commissioner deems relevant, shall substantially reimburse counties and municipalities for the loss of local tax under this part resulting from the exemption provided by § 67-6-393. The amount of the reimbursement shall be approximately equal to the aggregate amount of local tax that would have been collected under this part on the sale or use of goods otherwise taxable but for § 67-6-393.

(2) If the loss of local tax subject to reimbursement under this subsection (h) cannot be identified to a particular situs, the amount of the reimbursement shall be distributed to the counties based on the ratio of total local tax collections in the county under this part over the total local tax collections in all counties under this part. The amount received by the county under this subdivision (h)(2) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to each municipality in the county based on the ratio of total collections in that municipality over the total collections in the county and shall be distributed to the county based on the ratio of total collections in the unincorporated portions of the county over the total collections in the county.

(3) Notwithstanding any provision of § 67-6-103 to the contrary, the distribution required by this subsection (h) shall be made from state sales tax collections prior to distribution under § 67-6-103; provided, however, that no portion of the revenue derived from the increase in the rate of sales and use tax from six percent (6%) to seven percent (7%) contained in chapter

856, § 4 of the Public Acts of 2002 shall be distributed pursuant to this subsection (h). All such revenue shall continue to be allocated as provided in chapter 856 of the Acts of 2002.

History.

Acts 1999, ch. 406, § 14; 2002, ch. 719, § 10; 2003, ch. 355, § 46; 2003, ch. 357, § 68; 2004, ch. 592, § 9; 2004, ch. 959, §§ 27, 68; 2005, ch. 311, §§ 1, 2; 2005, ch. 398, § 3; 2006, ch. 1019, § 45; 2007, ch. 602, §§ 51, 120, 167, 168, 187; 2009, ch. 530, §§ 35, 48; 2011, ch. 72, §§ 1, 14; 2019, ch. 491, § 3.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 167, 168; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment, effective October 1, 2019, deleted (e) which read: "(e)(1) Proceeds of the tax provided for in § 67-6-702(f), shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total tax collections in all counties under this section.

"(2) The amount received by the county under subdivision (e)(1) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to the cities or towns in the county based on the ratio of total collections in the municipality to total collections in the county.

"(3) A county and a municipality may, by contract, provide for an alternative distribution for the amount not distributed under § 67-6-712(a)(1)."

Effective Dates.

Acts 2019, ch. 491, § 8. October 1, 2019.

67-6-712. Distribution of revenue.

(a) The tax levied by a county under this part shall be distributed as follows:

(1) One-half (½) of the proceeds shall be expended and distributed in the same manner as the county property tax for school purposes is expended and distributed; and

(2) The other one-half (½) as follows:

(A) Collections for privileges exercised in unincorporated areas, to such fund or funds of the county as the governing body of the county shall direct;

(B) Collections for privileges exercised in incorporated cities and towns, to the city or town in which the privilege is exercised;

(C) However, a county and city or town may by contract provide for other distribution of the one-half (½) not allocated to school purposes.

(3) Any out-of-state dealer making sales to a customer within this state shall report to the department information as prescribed by the commissioner, and as required under § 67-6-504(m), that is sufficient for the commissioner to appropriately distribute revenue pursuant to subdivisions (a)(1) and (a)(2).

(4) Any county, city, town, incorporated area or special school district entitled to receive the proceeds described in subdivisions (a)(1) and (2) has the power and authority, by resolution of the governing body thereof, to pledge such proceeds to the punctual payment of principal of and interest on bonds, notes or other evidence of indebtedness issued for the purpose for which such proceeds are permitted to be spent pursuant to such subdivisions (a)(1) and (2); provided, that the pledge by a county of proceeds to which it is entitled under subdivision (a)(1) shall not be effective, unless approved by resolution of the county board of education.

(b)(1) County trustees in counties having populations of seven hundred thousand (700,000) or more, according to the 1980 federal census or any subsequent federal census, shall not be entitled to receive compensation for receiving and distributing the taxes under subsection (a), notwithstanding § 8-11-110 or any other law to the contrary.

(2) This subsection (b) shall have no effect, unless it is approved by a two-thirds (⅔) vote of the legislative body of any county to which it may apply. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified by such presiding officer to the secretary of state.

(c)(1)(A) Notwithstanding the allocations provided for in subsection (a), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional baseball (American or National League), basketball (National Basketball Association), soccer (Major League Soccer), or major or minor league professional hockey (National Hockey League or Central Hockey League or East Coast Hockey League) franchise for that municipality, and only if the municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount shall be apportioned and distributed to the municipality equal to the amount of local tax revenue derived from the sale of admissions to the events of the major or minor league professional sports franchise and also the sale of food and drink sold on the premises of the sports facility in conjunction with those games, parking charges, and related services, as well as the sale by the major or minor league professional sports franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a professional sports franchise. The amount distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(B)(i) In addition to the allocations provided in subdivision (c)(1)(A), if there exists in a municipality a sports authority organized pursuant to title 7, chapter 67, and if that sports authority has secured a major league professional football franchise (National Football League or Canadian Football League, or its successors or assigns), and only if such municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of such tax revenue under this section, then an amount must be apportioned and distributed to the municipality equal to the amount of local tax revenue derived from the sale of admissions to all events occurring at the sports facility of the major league professional football franchise and also all sales of food, drinks, and merchandise sold on the premises of the sports facility in conjunction with those events, all parking charges, and all related services, all sales by the major league professional football franchise within the county in which the games take place of authorized franchise goods and products associated with the franchise's operations as a major league professional football franchise. The allocation of local

tax revenue provided in this subdivision (c)(1)(B)(i) must continue so long as a major league professional football franchise (National Football League or Canadian Football League, or its successors or assigns) holds a lease on the sports facility. Such amounts are for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality in accordance with title 7, chapter 67, or such other person as designated by the sports authority, to fund capital projects and the payment of debt service for capital projects at the sports facility of the major league professional football franchise, associated with the sports facility of the major league professional football franchise.

(ii) In addition to the allocation provided in subdivision (c)(1)(B)(i), an amount must also be apportioned and distributed to the municipality equal to one-half (½) the amount of local tax revenue derived from all sales in a designated area not exceeding one hundred thirty (130) acres contiguous to the sports facility and surrounding parking area of the major league professional football franchise; provided, that such acreage is not separated by a flowing navigable waterway. Such acreage must be designated by ordinance or resolution of the legislative body of the municipality in which the sports facility is located, and is subject to the approval of the commissioner of finance and administration. Such amounts are for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality in accordance with title 7, chapter 67, or such other person as designated by the sports authority, to fund capital projects and the payment of debt service for capital projects at the sports facility of the major league professional football franchise, associated with the sports facility of the major league professional football franchise, or any onsite or offsite infrastructure necessary for the operation of the sports facility of the major league professional football franchise. Apportionment and distribution of local tax revenue pursuant to this subdivision (c)(1)(B)(ii) must continue for a period of thirty (30) years after the issuance of the initial debt service to be underwritten by the sports authority, or comparable municipal agency formally designated by the municipality in accordance with title 7, chapter 67, or such other person as designated by the sports authority, or thirty-five (35) years from July 1, 2021, whichever is sooner; provided, however, that the time periods provided in this subdivision (c)(1)(B)(ii) are not affected by the prepayment or satisfaction of underwritten debt service prior to thirty (30) years after the issuance of the initial debt service as provided in this subdivision (c)(1)(B)(ii).

(C) In addition, if an indoor sports facility owned by a sports authority organized pursuant to title 7, chapter 67, in which a professional sports franchise is a tenant, exists in a county with a metropolitan form of government, then an amount shall be apportioned and distributed to the municipality equal to two-thirds (⅔) of the amount of the allocation of local tax revenue under subdivision (a)(2) derived from the sale of admissions to all other events occurring at such indoor sports facility and from all other sales of food and drink and other authorized goods or

products sold on the premises of the indoor sports facility, parking charges, and related services. Such amounts distributed to the municipality shall be for the exclusive use of the sports authority, or comparable municipal agency formally designated by the municipality, in accordance with title 7, chapter 67. Such amounts shall be used exclusively for the payment of, or the reimbursement of expenses associated with securing current, expanded, or new events for indoor sports facilities owned by a municipal agency formally designated by the municipality, in accordance with title 7, chapter 67.

(D) For the purpose of this subsection (c), "municipality" means any incorporated city or county located in this state.

(E) Notwithstanding the allocations provided for in subsection (a), in a municipality with a population of more than five hundred thousand (500,000), according to the 2010 federal census or any subsequent federal census, with a motor sports facility less than one (1) mile in circumference, and only if the municipality or any board or instrumentality of the municipality reimburses the state for any costs to reallocate apportionments of the tax revenue under this section, then an amount must be apportioned and distributed to the municipality equal to the amount of local tax revenue derived from the sale of admissions to all events occurring at the motor sports facility and from all sales of food, drinks, merchandise, and parking, which includes parking of recreational vehicles and other vehicles, regardless of whether such vehicles are used for overnight accommodations or connected to electric and water services, sold from a location on the premises of the motor sports facility in conjunction with an event occurring at the motor sports facility. The amount distributed to the municipality must be for the exclusive use of the agency formally designated by the municipality to govern the operations of the motor sports facility and must be utilized exclusively for capital and operation expenses associated with the motor sports facility.

(2) Any bonds issued relative to the construction of a sports facility for a sports franchise listed in subdivision (c)(1)(A) shall not be issued for a term longer than thirty (30) years from the date the first game is played by the professional sports franchise in a municipality, as defined in subdivision (c)(1).

(d) Notwithstanding the provisions of this section to the contrary, revenue derived from taxes imposed by this part shall be earmarked and allocated in accordance with title 7, chapter 88.

(e) If any dealer fails to provide the department with the information required under § 67-6-504(m) and the department is unable to determine the proper distribution of local sales tax under subsection (a), the department shall distribute the local sales tax as follows:

(1) For taxes received by the department before July 1, 2021:

(A) The tax shall be distributed to the counties based on the ratio of local tax collections in the county under this section over total local tax collections in all counties under this section;

(B) The amount received by the county under subdivision (e)(1)(A) shall be distributed first as provided for in subdivision (a)(1). The remainder

shall be distributed to each incorporated municipality in the county based on the ratio of local tax collections in the municipality to total local tax collections in the county and shall be distributed to the county based on the ratio of local tax collections in the unincorporated portions of the county to total local tax collections in the county;

(2) For taxes received by the department on or after July 1, 2021:

(A) The tax shall be distributed to the counties based on the ratio of local tax collections in the county from dealers with no location in this state that can be identified by situs over the total local tax collections in all counties from dealers with no location in this state that can be identified by situs;

(B) The amount received by the county under subdivision (e)(2)(A) shall be distributed first as provided for in subdivision (a)(1). The remainder shall be distributed to each incorporated municipality in the county based on the ratio of local tax collections in the municipality from dealers with no location in this state that can be identified by situs over the total local tax collections in the county from dealers with no location in this state that can be identified by situs and shall be distributed to the county based on the ratio of local tax collections in the unincorporated portions of the county from dealers with no location in this state that can be identified by situs over the total local tax collections in the county from dealers with no location in this state that can be identified by situs;

(3) A county and a municipality may, by contract, provide for an alternative distribution for the amount not distributed under subdivision (a)(1).

(f) Notwithstanding the allocations provided for in subsection (a), if a franchise for a minor league affiliate of a major league baseball team (American or National League) playing at the Class AA level or higher locates in a municipality in this state and if the municipality constructs a new stadium for the franchise, then local sales tax shall be apportioned and distributed to the municipality as provided in § 67-6-103(d)(1)(A)(iii).

History.

Acts 1963, ch. 329, § 4; 1967, ch. 90, § 1; T.C.A., § 67-3052; Acts 1987, ch. 176, § 2; 1988, ch. 848, §§ 1, 2; 1990, ch. 1096, § 2; 1993, ch. 519, §§ 3, 5; 1994, ch. 968, § 2; 1995, ch. 237, § 2; 1998, ch. 747, § 1; 1998, ch. 1055, § 13; 2004, ch. 959, §§ 28, 68; 2005, ch. 311, § 2; 2005, ch. 441, § 2; 2007, ch. 602, §§ 52, 169; 2008, ch. 1106, § 15; 2009, ch. 530, §§ 35, 63; 2011, ch. 72, § 1; 2012, ch. 849, § 2; 2019, ch. 440, § 1; 2019, ch. 491, §§ 4, 5; 2021, ch. 401, §§ 5-7; 2021, ch. 422, § 2; 2021, ch. 558, § 3.

Compiler's Notes.

Amendments to this section were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 169; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective amendments to this section were repealed.

Amendments.

The 2019 amendment by ch. 440, inserted "soccer (Major League Soccer)," following "(National Basketball Association)" in (c)(1)(A).

The 2019 amendment by ch 491, effective October 1, 2019, added (a)(3) and redesignated former (a)(3) as (a)(4), and added (e).

The 2021 amendment by ch,. 401 deleted "football (National Football League or Canadian Football League, or its successors or assigns)," following "baseball (American or National League)," from the first sentence of (c)(1)(A); added present (c)(1)(B); redesignated former (c)(1)(B)–(c)(1)(C) as (c)(1)(C)–(c)(1)(D); and inserted "for a sports franchise listed in subdivision (c)(1)(A)" in (c)(2).

The 2021 amendment by ch. 422 added (f).

The 2021 amendment by ch. 558 added (c)(1)(E).

Effective Dates.

Acts 2019, ch. 440, § 2. May 22, 2019.

Acts 2019, ch. 491, § 8. October 1, 2019.

Acts 2021, ch. 401, § 8. July 1, 2021.

Acts 2021, ch. 422, § 3. July 1, 2021.
Acts 2021, ch. 558, § 4. July 1, 2021.

67-6-714. Local option tax exemption for cable or wireless cable television services.

There is exempt from the local option tax fees for subscription to, access to or use of television programming or television services provided by a video programming services provider offered for public consumption up to but not exceeding twenty-seven dollars and fifty cents ($27.50) per month.

History.
Acts 1999, ch. 423, § 5; 2003, ch. 357, § 69; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 47, 51, 170, 187; 2009, ch. 530, §§ 35, 49; 2011, ch. 72, §§ 1, 15; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; 2019, ch. 157, § 1.

Compiler's Notes.
Section 67-6-714 (Acts 1999, ch. 423, § 5; 2003, ch. 357, § 69; 2004, ch. 959, § 68; 2005, ch. 311, § 1; 2007, ch. 602, §§ 47, 51, 170, 187; 2009, ch. 530, §§ 35, 49; 2011, ch. 72, §§ 1, 15), concerning local option tax exemption for cable or wireless cable television services, was repealed by Acts 2007, ch. 602, § 170, as amended by Acts 2009, ch. 530, §49, and further amended by Acts 2011, ch. 72, § 1, and further amended by Acts 2013, ch. 480, § 1, and further amended by Acts 2015, ch. 273, § 3, and further amended by Acts 2017, ch. 193, § 1, and further amended by Acts 2019, ch. 157, § 1, effective July 1, 2021. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, the prospective repeal of this section was repealed.

Effective Dates.
Acts 2019, ch. 157, § 2. April 12, 2019, July 1, 2021.

67-6-715, 67-6-716. [Repealed.]

Compiler's Notes.
§§ 67-6-715 and 67-6-716 were enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, §§ 171, 172; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, these sections never took effect.

PART 9

TRANSACTIONS SUBJECT TO SALES AND USE TAXES

67-6-901. [Repealed.]

Compiler's Notes.
This section was enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 173; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, this section never took effect.

67-6-902. [Repealed.]

Compiler's Notes.
This section was enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 174; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, this section never took effect.

67-6-903. [Reserved.]

67-6-904. [Repealed.]

Compiler's Notes.

This section was enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 175; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, this section never took effect.

67-6-905. Source of sales of telecommunication services — Definitions.

(a) As used in this section, unless the context otherwise requires:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls;

(3) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(4) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this provision only applies for the purpose of sourcing sales of telecommunications services under this section. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(5) "Customer channel termination point" means the location where the customer either inputs or receives the communications;

(6) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity;

(7) "Home service provider" means the same as that term is defined in 4 U.S.C. § 124(5);

(8) "Mobile telecommunications service" means the same as that term is defined in 4 U.S.C. § 124(7);

(9) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider;

(10) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number

which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service;

(11) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels; and

(12) "Service address" means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in subdivision (a)(12)(A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and

(C) If the locations in subdivisions (a)(12)(A) and (a)(12)(B) are not known, the service address means the location of the customer's place of primary use.

(b) Except for the defined telecommunication services in subsection (d), the sale of telecommunication service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call:

(1) Originates and terminates in that jurisdiction; or

(2) Either originates or terminates and in which the service address is also located.

(c) Except for the defined telecommunication services in subsection (d), a sale of telecommunications services sold on a basis other than a call-by-call basis and ancillary services are sourced to the customer's place of primary use.

(d) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116-126);

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either:

(A) The seller's telecommunications system; or

(B) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(3) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located; and

(D) Service for segments of a channel located in more than one (1) jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

History.
Acts 2004, ch. 782, § 14.

Compiler's Notes.
A future version of this section was enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 176; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, this section never took effect.

67-6-906. [Repealed.]

Compiler's Notes.
This section was enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 177; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, this section never took effect.

67-6-907. [Repealed.]

Compiler's Notes.
This section was enacted and scheduled to take effect July 1, 2021, by Acts 2007, ch. 602, § 178; as amended by Acts 2009, ch. 530, § 35; 2011, ch. 72, § 1; 2013, ch. 480, § 1; 2015, ch. 273, § 3; 2017, ch. 193, § 1; and 2019, ch. 157, § 1. However, pursuant to Acts 2021, ch. 285, § 1, effective April 30, 2021, this section never took effect.

CHAPTER 7

SEVERANCE TAXES

Part 1. Coal Severance Tax

Section
67-7-104. Measure of tax. [Current version. See second version of section with contingent amendment and Compiler's Notes.]
67-7-104. Measure of tax. [Second version with contingent amendment adding subsection (b). See first version of section and Compiler's Notes.]
67-7-110. Apportionment of revenue. [Current version. See second version of section with contingent amendment and Compiler's Notes.]
67-7-110. Apportionment of revenue. [Second version with contingent amendment. See first version of section and Compiler's Notes.]

PART 1

COAL SEVERANCE TAX

67-7-104. Measure of tax. [Current version. See second version of section with contingent amendment and Compiler's Notes.]

The measure of the tax on all coal products severed from the ground in this state shall be:

(1) On or after July 1, 2009, through June 30, 2011, fifty cents (50¢) per ton;

(2) On or after July 1, 2011, through June 30, 2013, seventy-five cents (75¢) per ton; and

(3) On or after July 1, 2013, one dollar ($1.00) per ton.

History.

Acts 1972, ch. 795, § 2; 1973, ch. 12, § 1; 1973, ch. 96, § 2; 1974, ch. 690, §§ 1, 2; 1980, ch. 912, § 1; 1981, ch. 519, §§ 1, 2; T.C.A., § 67-5902; Acts 1984, ch. 837, § 9; 2009, ch. 138, § 1.

Compiler's Notes.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

67-7-104. Measure of tax. [Second version with contingent amendment adding subsection (b). See first version of section and Compiler's Notes.]

(a) The measure of the tax on all coal products severed from the ground in this state shall be:

(1) On or after July 1, 2009, through June 30, 2011, fifty cents (50¢) per ton;

(2) On or after July 1, 2011, through June 30, 2013, seventy-five cents (75¢) per ton; and

(3) On or after July 1, 2013, one dollar ($1.00) per ton.

(b) **[Contingent amendment. See first version of section and Compiler's Notes.]** (1) On or after the effective date of this subsection (b)[See Compiler's Notes], in addition to the tax payable under subdivision (a)(3), each operator shall remit an assessment in the following amount:

(A) For coal that is severed from the ground in underground mining operations, the assessment shall be four cents ($0.04) per ton; and

(B) For coal that is severed from the ground in surface coal mining and reclamation operations, the assessment shall be nine cents ($0.09) per ton.

(2) The assessment shall be due and payable in the same manner as the coal severance tax under § 67-7-106.

History.

Acts 1972, ch. 795, § 2; 1973, ch. 12, § 1; 1973, ch. 96, § 2; 1974, ch. 690, §§ 1, 2; 1980, ch. 912, § 1; 1981, ch. 519, §§ 1, 2; T.C.A., § 67-5902; Acts 1984, ch. 837, § 9; 2009, ch. 138, § 1; 2018, ch. 839, § 40; 2021, ch. 548, § 13.

Compiler's Notes.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Acts 2021, ch. 548, § 17 provided that the

act, which amended this section, shall take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Effective Dates.

Acts 2021, ch. 548, § 17. [See Compiler's Notes.]; provided that for the purposes of promulgating rules, the act took effect May 26, 2021.

Amendments.

The 2021 amendment added (b).

67-7-110. Apportionment of revenue. [Current version. See second version of section with contingent amendment and Compiler's Notes.]

(a) The tax shall be levied for the use and benefit of local governments only and all revenues collected from the tax, except deductions for administration and collection provided for in this part, shall be allocated to the county from which such coal products were severed.

(b) All revenues collected under this part in a county in which coal products are severed, less an amount of one and one hundred twenty-five thousandths percent (1.125%) of the tax, which shall be retained by the department and credited to its current service revenue to cover the expenses of administration and collection, shall be remitted by the commissioner to that county in which the coal products were severed for the following specific purposes: one-half (½) of all revenues collected shall be used for the educational system or systems of the county, and the remaining one-half (½) of all revenues collected shall be used for highway and stream cleaning systems of the county.

(c) Any adjustment of taxes, interest or penalty with any county that is deemed necessary in order to correct any error may be made on a subsequent disbursement to that county.

History.

Acts 1972, ch. 795, §§ 1, 5; 1973, ch. 96, §§ 1, 5; 1976, ch. 641, § 2; 1980, ch. 912, § 2; T.C.A., §§ 67-5901, 67-5905; Acts 1984, ch. 837, § 9; 2003, ch. 355, § 45; 2005, ch. 500, § 8; 2006, ch. 989, § 13; 2009, ch. 138, § 2.

67-7-110. Apportionment of revenue. [Second version with contingent amendment. See first version of section and Compiler's Notes.]

(a) The tax shall be levied for the use and benefit of local governments only and all revenues collected from the tax, except deductions for administration and collection provided for in this part, shall be allocated to the county from which such coal products were severed.

(b) All revenues collected under this part in a county in which coal products are severed, less an amount of one and one hundred twenty-five thousandths percent (1.125%) of the tax, which shall be retained by the department and credited to its current service revenue to cover the expenses of administration and collection, shall be remitted by the commissioner to that county in which the coal products were severed for the following specific purposes: one-half (½) of all revenues collected shall be used for the educational system or systems of the county, and the remaining one-half (½) of all revenues collected shall be used for highway and stream cleaning systems of the county.

(c) Any adjustment of taxes, interest or penalty with any county that is deemed necessary in order to correct any error may be made on a subsequent disbursement to that county.

(d) **[Contingent amendment. See Compiler's Notes.]** All of the moneys received from the payment of the assessment levied by § 67-7-104(b) shall be transferred to the treasurer for deposit in the coal mining protection fund, created by § 59-8-132, to be used for the administration and enforcement of the requirements of the Primacy and Reclamation Act of Tennessee, compiled in title 59, chapter 8, part 1.

History.

Acts 1972, ch. 795, §§ 1, 5; 1973, ch. 96, §§ 1, 5; 1976, ch. 641, § 2; 1980, ch. 912, § 2; T.C.A., §§ 67-5901, 67-5905; Acts 1984, ch. 837, § 9; 2003, ch. 355, § 45; 2005, ch. 500, § 8; 2006, ch. 989, § 13; 2009, ch. 138, § 2; 2021, ch. 548, § 14.

Compiler's Notes.

Acts 2021, ch. 548, § 1 repealed act sections 1-43 of chapter 839 of the Public Acts of 2018. That act had provided for the contingent amendment of this section; however, that amendment did not take effect.

Acts 2021, ch. 548, § 17 provided that the act take effect eight (8) months immediately following the receipt of notification from the secretary of the interior that this state has been approved to exercise primacy over the regulation of surface coal mining and reclamation operations within its territorial boundaries.

Amendments.

The 2021 amendment added (d).

Effective Dates.

Acts 2021, ch. 548, § 17. [See Compiler's Notes.]; provided that for the purposes of promulgating rules, the act took effect May 26, 2021.

CHAPTER 8

TRANSFER TAXES

Part 1. Gift Tax [Not applicable to any transfer by gift made on or after January 1, 2012, see § 67-8-118.]

Section

67-8-101. Taxable transfers. [Not applicable to any transfer by gift made on or after January 1, 2012, see § 67-8-118.]

PART 1

GIFT TAX
[NOT APPLICABLE TO ANY TRANSFER BY GIFT MADE ON OR AFTER JANUARY 1, 2012, SEE § 67-8-118.]

67-8-101. Taxable transfers. [Not applicable to any transfer by gift made on or after January 1, 2012, see § 67-8-118.]

(a)(1) Except as otherwise provided by subdivision (a)(2), a tax is imposed upon the transfer by gift during any calendar year by any person of the following property, or any interest therein:

(A) When the transfer is from a resident of this state:

(i) Real property situated within this state;

(ii) Tangible personal property, except such as has an actual situs without this state;

(iii) All intangible personal property; and

(B) When the transfer is from a nonresident of this state:

(i) Real property situated within this state; and

(ii) Tangible personal property that has an actual situs within this state.

(2) No tax shall be imposed upon the transfer by gift made by any person on or after January 1, 2012; provided, however, this subdivision (a)(2) shall not be construed to absolve any taxpayer of liability for any tax duly imposed by this section, during any tax year that began prior to January 1, 2012.

(b) Property in which a person holds a qualifying income interest for life, which is included for taxation pursuant to subsection (e), shall be treated as a taxable transfer of such property by such person.

(c) The tax shall apply whether a gift is in trust or otherwise, and whether the gift is direct or indirect. The relinquishment or termination, other than by the donor's death, of any power to revest in the donor the property theretofore transferred by the donor shall be considered to be a transfer by the donor by gift of the property, subject to such power and shall be taxable under this part, and any payment of the income from the property to a beneficiary other than the donor shall be considered to be a transfer by the donor of such income by gift and shall be taxable under this part.

(d) Where a donor transfers an unqualified and unrestricted gift to a person in trust, such a transfer is a gift of a present interest where the trust instrument provides that the beneficiary has the power to demand immediate possession and enjoyment of such gift in the calendar year in which such gift is given, and contains provisions to notify such beneficiary of the right to make such demand. Where the beneficiaries of such trust are minors, or otherwise lack the capacity to make legally binding agreements, the parent or parents, other than the settlor of such trust, may exercise the right to demand possession and enjoyment in the calendar year in which the gift is given as natural guardian for and on behalf of such minor or other such beneficiary, even though such parent or parents may be a party to the trust instrument.

(e)(1) Any disposition of all or part of a "qualifying income interest for life," as defined in § 2056(b)(7)(B)(ii) of the Internal Revenue Code (26 U.S.C. § 2056(b)(7)(B)(ii)), in any property to which this subsection (e) applies shall be treated as a transfer of such property.

(2) This subsection (e) applies to any property, if a deduction was allowed with respect to the transfer of such property to the donor:

(A) Under § 67-8-315(a)(6) by reason of its incorporation of § 2056(b)(7) of the Internal Revenue Code (26 U.S.C. § 2056(b)(7)); or

(B) Under § 67-8-105(a) by reason of its incorporation of § 2523(f) of the Internal Revenue Code (26 U.S.C. § 2523(f)).

(3) For purposes of taxation under this subsection (e), the classification of beneficiaries provided for by § 67-8-102 shall be determined by reference to the relationship of the beneficiaries of the remainder interest named in the instrument to the decedent or person creating such remainder interest.

(f) Transfers for educational expenses or medical expenses that are not treated as a transfer of property by gift pursuant to § 2503(e) of the Internal Revenue Code (26 U.S.C. § 2503(e)), shall not be treated as a transfer of property by gift for purposes of this part.

(g) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value

of the property exceeded the value of the consideration shall, for the purpose of the tax imposed by this chapter, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

(h) If a person who would otherwise be the recipient of property by gift, inheritance or other gratuitous transfer disclaims all or part of the property in accordance with § 31-1-103 [repealed], such disclaimer shall not cause the disclaimant to be treated as having made a taxable transfer under this section.

History.

Acts 1939, ch. 137, §§ 1, 2, 4, 6; C. Supp. 1950, §§ 1295.1, 1295.2, 1295.4, 1295.6 (Williams, §§ 1328.1, 1328.2, 1328.4, 1328.6); Acts 1965, ch. 19, § 1; 1977, ch. 463, § 1; 1978, ch. 731, § 17; 1980, ch. 759, § 1; 1983, ch. 73, §§ 9-11; T.C.A. (orig. ed.), §§ 67-2501, 67-2502, 67-2504, 67-2505(c); Acts 1986, ch. 705, § 2; 2012, ch. 1085, § 1.

Compiler's Notes.

Former § 31-1-103, referred to in this section, was repealed by Acts 2019, ch. 340, § 1.